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Indian legislation and legislative council

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members must speak *sitting and not standing!* The advisability of introducing this rule into Local Legislative Councils is worthy of consideration. In Bengal members are not allowed to read their speeches, but they may refresh their memory by referring to notes. All members have an opportunity of speaking, and the mover of a motion may speak once by way of reply. Any member may speak at the request and on behalf of another member, who is unable to express himself in English. The question is put by the President, and decided by a majority of votes. Any member may ask for any papers or returns connected with any Bill before the Council, and it is for the President to determine whether they can be given. Members, having occasion to ask questions of other members on any measure then under the consideration of the Council, must ask such questions through the President.

The rules for the Bombay and Madras Councils are similar. The President appoints the times and places of meeting. The quorum for a Local Council is five, consisting of the Governor, or (in his absence) some ordinary Member of Council and four or more members of Council (including, under the term members of Council, additional members). The Supreme Council sits both in Simla and in Calcutta, but enacts its most important business in Calcutta. The Bengal Council generally sits during the period from January to April.

2. *Introduction, Publication, and Consideration of Bills.*

Any member wishing to move for leave to introduce Bill, in accordance with the provisions of sec. 19 of the I Councils' Act, must give the previous notice of the title motion be carried, the Bill and reasons shall, if not member, or (if he so with the member.

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languages (if any) as the Council in each case decides to be necessary for the purpose of giving notice to the communities affected by the Bill.

It may be said, broadly speaking, that Bills of the Government of India come from the Select Committee in the shape in which they are eventually passed. Every section is thoroughly discussed and threshed out in Select Committee. The Council appoints the members of Select Committee, but the Law member is always a member of every Committee. Ordinarily the Select Committee are not allowed to report on a Bill until the expiry of three months from the date of its first publication in the *Gazette of India*. In Bengal the ordinary period is one month. If a Bill is very materially altered in Select Committee, it is generally republished. The Select Committee's Report is circulated to each member of the Council, and is taken into consideration by the Council "as soon as conveniently may be."

Any member may propose an amendment of a Bill, provided he has sent notice of his amendment to the Secretary three days before the amendment. Such notices are printed and circulated to the members. In Bengal votes are taken by voices or by division, but *must* always be taken by division if any member so desires. Any member may move that a Bill, which has been amended by the Council or by a Select Committee, be republished or re-committed, and, if the Council so decide, the President may order the Bill to be republished or re-committed, as the case may be. If no amendment is made when a Bill is taken into consideration by the Council, [illegible] The President has a general

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is allowed to speak against the closing of the debate. The opinion of a distinguished French statesman, M. Guizot, given before a Committee of the House of Commons on public business in 1848, may not be out of place here: "I think," said M. Guizot, "that in our Chamber it was an indispensable power, and I think it has not been used unjustly and improperly generally; calling to mind what has passed of late years, I do not recollect any serious and honest complaint of the clôture. In the French Chambers, as they have been during the last 34 years" (he was speaking in July 1848), "no member can imagine that the debates would have been properly conducted without the power of pronouncing the clôture." In another part of his evidence, M. Guizot stated: "before the introduction of the clôture in 1814, the debates were protracted indefinitely, and not only were they protracted, but at the end, when the majority wished to put an end to the debate, and the minority would not, the debate became very violent; and out of the house, among the public, it was a source of ridicule."

The rules in Madras and Bombay are much the same. In Bombay there are three readings of a Bill, but a reading means that only the title of the Bill is read, unless the Council requires that the Bill shall be more fully read.

The India Councils' Act contains no express provision regarding publicity of debate. The debates in Hansard show that there was a good deal of discussion on this point. Mr. W. Forster asked to what extent publicity was to be allowed, and Sir Charles Wood replied that the matter would be left to the discretion of the Governor-General or the Governor of the Presidency. Lord Canning, in a despatch of the 15th January 1861, had recommended that the proceedings should be conducted as in a committee or commission, and not in the form of a set Parliamentary debate, and that they should be reported under the control of the Governor-General, and only published after all the proceedings were over. Mr. Bright thought it right that legislative assemblies should have the right to close their doors on special occasions, but that Lord Canning's suggestions should be followed in a more liberal spirit. Sir Charles Wood said it would be much safer to leave it to the Governor-General to decide to what extent publicity should be given to the debates; if the practice in England were modified, it would only be so far as to ensure an authentic report of the speeches. Lord Granville spoke to the same effect in the House of Lords.

3.—*Passing of Bills, Publication of Acts, Petitions, &c.*

When a Bill is passed by the Supreme Council, a copy thereof is signed by the President, and when the Governor-General

has declared his assent thereto, such copy is signed by the Governor-General, and the Bill is published as soon as possible in the Official Gazettes as an Act of the Governor-General in Council. Such publication is made in the *Gazette of India*, and the Official Gazettes of the Local Governments in English, and in the principal vernacular languages spoken in territories subject to such Governments respectively: provided that, if the Act does not apply to the whole of British India, it is published only in the *Gazette of India*, and in the Gazettes of the Local Governments to whose territories it applies.

After the passing * of a Bill by a Local Council, the Governor (or Lieutenant-Governor) communicates his assent or dissent to the Council by certificate in writing on the face of the Bill, and the Bill with such certificate is lodged in the records of the Council. The Governor shall transmit forthwith to the Governor-General an authentic copy of every law or regulation to which he shall have declared his assent; and no such law or regulation shall have validity until the Governor-General shall have assented thereto, and such assent shall have been signified by him to, and published by, the Governor in the Official Gazette. The fact of assent or dissent of the Governor-General (as also the disallowance of any law by Her Majesty) is communicated to the Council by the Governor personally or by letter, and is recorded in the journal of the Council. It is not competent to any member of the Council to make any motion upon, or otherwise bring under the consideration of the Council, the exercise by Her Majesty, the Governor, or the Governor-General of their prerogative of disallowing a Bill by withholding their assent from it. Immediately after the Governor-General's assent, the Act is published in the Local Gazette.

The Council Chamber is not open to the public, but strangers may be admitted to it on the order of the President. The President, on the motion of any member, or otherwise, may direct at any time during a sitting of the Council, that strangers withdraw.

Communications on matters connected with any Bill before the Supreme Council may be addressed, either in the form of a petition to the Governor General in Council or in a letter to the Secretary, and must in either case be sent to the Secretary. Ordinarily, such communications will not be answered. Except in the case of the High Court at Fort William, such communications from courts, officials, or public bodies shall ordinarily be sent though the Local Government. The Secretary

* "After the passing of a Bill, the Secretary shall revise and complete the marginal notes thereof, and shall submit it to the Lieutenant-Governor for his assent." Bengal Council Rules XV, (9)

shall either cause such communications to be printed and send a copy to each member, or circulate them for the perusal of each member. Under rule 12 of the Madras rules of business, petitions shall be in respectful and temperate language, and shall conclude with a distinct prayer. Any member may make a motion upon any petition brought under the consideration of Council. Rules 18, 19, and 20 of the Madras rules seem to be peculiar to the Madras Council. They are as follows :—

> 18. If a Bill be pending peculiarly affecting private interests, and any person whose interests are so affected apply by petition to be heard by himself or his counsel upon the subject of the Bill, an order may be made, upon the motion of a member, allowing the petitioner to be heard at a stated time, provided the petition be received by the Assistant Secretary before the matter to which the petition relates has been finally disposed of by the Council.
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> 19. In no other case or manner shall any stranger be heard by himself or his counsel If the petitioner or his counsel do not appear atsuch stated time, such leave shall lapse.
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> 20. Any member may move that the hearing of any petitioner or of his counsel shall cease if such petitioner or his counsel be unduly prolix or irrelevant.

In continental legislative assemblies petitions are ordinarily referred to a Standing Committee on Petitions, and discussion takes place only on such petitions as have been recommended for that purpose. In most countries petitions can only be presented by a member, and not sent by any body. In France no petition can be received, if it comes from a meeting held on the highway. In Italy petitions are divided by the Committee into five classes :—(1) petitions which are anonymous or of doubtful authenticity, or contrary to Articles 57 and 58 of the Constitution ; (2) petitions which are insulting to religion, to the king, or to parliament, or which are evidently contrary to the statute or inconsistent in form ; (3) petitions for things beyond the competency of Parliament, such as requests for offices subsidies, and the like ; (4) petitions entertaining appeals for an object of public or private interest which are not within the direct competency of the tribunals, and for which, according to the petitioners, the administration has refused or omitted to provide, or has provided in a manner contrary to law ; (5) petitions which contain useful information and suggestions. No action is taken on petitions of the first three classes. If the Committee considers that the petitions of the fourth class are worthy of being taken into consideration, it proposes to the House to refer them to one or more ministers with an explanation of the reasons of its motion. Petitions of the fifth class can be deposited in the archives of the House, or be referred to a particular bureau, or to a committee, or else to

one or more of the ministers. But no action is taken on any petition which appears to be devoid of any foundation or value.

It has been stated that some right of interpellation is to be allowed in the Supreme Legislative Council. Under proper restrictions, this right is calculated to benefit the administration, as it will enable the Government to explain its action in any particular matter, to correct misrepresentations in the press, and to protect and vindicate its officers from the false and slanderous attacks so often made against them.

It is not yet known to what extent this right of interpellation is to be given, and it may be useful to note the practice in some of the continental legislatures. In Austria-Hungary interpellations which a member desires to address to a minister or head of a central board, must be presented to the President in writing, and be signed by at least 10 members in the Upper and 15 in the Lower House. The official, to whom the interpellation is addressed, may answer at once, or fix a later sitting for it, *or he may decline answering*, at the same time giving his reasons for doing so. When an answer is given, the House decides whether discussion shall follow or not. In France, even though an interpellation is placed on the order of the day, a minister is not compelled to give an answer. The same rule holds in Italy. In Germany, a question which it is desired to put to the Federal Council must be signed by 30 members. If the Chancellor is willing to answer the question, discussion is permitted after the reply to the interpellation, on a motion supported by at least 50 members. No motion is permitted, but any member is at liberty to renew the interpellation on some future day in the form of a motion.

Even the smallest right of interpellation in India will constitute a radical inroad on the existing laws and constitution. It will necessitate the amendment of sections 19 and 30 (for the Supreme and Local Councils respectively) of 24 and 25 Victoria, s. 67, which enact that "it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereto." As has been pointed out in my articles on "Indian Constitutional Law," the object of these sections was to prevent the legislature from interfering with the functions of the Executive Government, and occupying its time with matters which were not directly connected with the special duties assigned to it. The Legislative Councils constituted under the Act of 1861 have been described by high authority as follows: "The Councils are not deliberative bodies with respect to any subject but that of the immediate legislation before them.

They cannot inquire into grievances, call for information, or examine the conduct of the executive. The acts of the administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion." It is manifest, then, that any the slightest right of interpellation will be a wide and radical departure from the principles of the Councils' Act. It may be advisable to afford the Government an opportunity of publicly defending its acts, and those of its executive and judicial officers and officials, who now have to suffer in silence, will benefit thereby ; but to permit inquiry into grievances, calls for information or examination of the conduct of the executive, would renew, in an intensified form, all those evils, the existence of which led to the passing of the Councils' Act.

III. The Legislative Department of the Government of India.

The late Sir Henry Maine attributed the ever-increasing necessity for legislation in India to the steady emergence of the country from a state of discretionary (or patriarchal) government into a state of government by law, and he thought that such necessity would go on increasing as the country became more and more civilized. It was chiefly through his instrumentality that the Legislative Department, which used to be only a branch of the Home Office, was in 1869 constituted a separate department ; and since that date all correspondence with Her Majesty's Government relating to Bills and Acts, whether of the Imperial or Local Councils, has been conducted in the Legislative Department

Perhaps the most important work of the Legislative Department, as a department, is the giving of opinions on cases and matters referred by the Executive departments of the Government of India. The latter may consult the Legislative department on the following subjects :—

(1.) The construction of Statutes, Acts, and Regulations ;
(2.) Cases involving general legal principles ;
(3.) Proposed amendments of the law, and
(4.) Notifications to be issued under any enactment.

Draft rules, framed under Acts of the Governor-General in Council, are also sent to the Legislative Department for consideration.

In addition to other miscellaneous duties, it is the duty* of the Secretary in the Legislative Department to draft all

* It is specially enacted in the Bengal Council Rules (XX) that all acts which the Secretary is required to do may be done by any Secretary, Junior Secretary, or Under-Secretary of the Government of Bengal. They cannot be done by any other person.

Bills originated by the Government of India, the statements of their Objects and Reasons, and the Reports of the Select Committee to which such Bills are referred; if so desired, to draft Bills introduced by a non-official member in consultation with such member; to assist the Council and Committees; to examine all Bills deposited by additional members, and report to the President on those which contain clauses trenching on subjects coming within sections 19 or 22 of the Indian Councils' Act.

There is, or was, a rule by which the Legislative Departments were precluded from giving an opinion in cases in which the Advocate General had already advised. But it has been found impracticable to adhere to this rule; and, indeed, it would be preposterous to hold that the Government of India is bound to accept any opinion, the incorrectness of which could be clearly demonstrated. There is no rule that the Executive Departments are bound to accept and act on the opinion of the Legislative Department; but, as a matter of fact, they ordinarily do. By not doing so, they would shift on to themselves the responsibility which now rests with the Legislative Department. In matters in which legal questions are involved, the ministries of civilized Governments act, as a rule, as advised by their responsible Law Officers: but there is, of course, no rule, legal or constitutional, which compels them to do so.

Respective Positions of the Executive and Legislative Departments of the Government of India as regards legislative measures.

The Legislative Department is not, in respect of Government measures, an originating or initiating department, and its proper function in respect of such measures is to put into precise language and proper technical form projects of law, of which the political expediency has been decided elsewhere. All legislative proposals on the part of Government are first considered in the Executive Department in which they originate, or to which their subject belongs. The necessity for legislation is there affirmed, and all points of importance connected therewith are considered and settled. The papers, with the orders of Government thereon, are then sent to the Legislative Department

All legislative proposals emanating from Local administrations are addressed, not to the Legislative Department, but to the proper Executive Department of the Government of India; but after a measure has been referred to the Legislative Department, that department corresponds directly with local administrations.

When a Bill has been passed by a Local Legislative Council, and submitted for the assent of the Governor-General under section 40 of the Indian Councils' Act, it first goes to the Secretary to the Government of India in the Executive Department to which its subject belongs. That department, after passing its opinion on the policy of the Bill, forwards it with all connected papers to the Governor-General for orders. The Bill, if approved as an administrative measure, is then submitted to the Legislative Department to report whether there are any objections to it other than objections to its policy The same course is pursued in dealing with any proposal for the making and promulgation of an Ordinance under section 23 of the Act, and with any proposed law which requires the previous sanction of the Governor-General under sections 19 and 43 of the Act So draft Regulations, framed under 33 Victoria, chapter 3, are first sent to the Executive Department, and then to the Legislative Department with the view of obtaining the Governor-General's assent, in the same way as Bills passed by Local Councils.

IV.—Extent of Independence of the Indian Legislative Council.

In my essay on "Indian Codification,"* I have given some account of the Law Commissions appointed under the Charter Acts of 1833 and 1853.† As long as these strong Commissions were sitting in England, the power and discretion of the India Legislature were subject to considerable limitation. Drafts of Acts framed by the Indian Law Commissioners were sent out to the Government of India, who were expected to accept them and pass them into law with as few modifications as possible. Such a position was naturally unpalatable to the Indian Government, and indeed, it was hardly in consonance with the constitution. Section 22 of the Indian Councils' Act empowers the Governor-General in Council to "make laws and regulations," while section 21 empowers Her Majesty to disallow such laws through the Secretary of State in Council. Thus a complete legislative discretion and initiation is given to the Government of India. Had the Indian Law Commission continued, the legislative independence of the Indian Legislature might have been seriously threatened, and it is perhaps fortunate that the Commissioners resigned (1870), owing apparently to their disappointment at the slowness of the Government of India in passing their drafts into law.

But let us leave out of the question any accidental disturbing elements, such as the existence of a Law Commission in

* *Calcutta Review*, No CLXXVI, April 1889

† 3 and 4 Will. IV. c. 85, s. 53 and 16 and 17 Vict. c. 95 s. 21.

England. There can be no doubt that the Indian Legislature is not vested with absolute independence and discretion in the same sense as the House of Commons, or the legislature of any Sovereign State. The great principle which underlies the Government of India is, that the final control and direction of Indian affairs rests with the Home Government and not with the Government in India. The latter is subordinate to the former, and no Government can be subordinate, unless it is within the power of the Superior Government to order what is to be done or left undone. It is true that the Imperial Government always has the power of imposing its veto on any Act passed in India. But is a mere negative or destructive power sufficient? To be real and effective, it must be affirmative or creative. The Home Government might be of opinion that the passing of some particular measure into law was essential for the welfare or safety of the Indian Empire. If Acts known as executive may be ordered, it seems to follow that legislative measures may be ordered. The constitution of the Government of India is peculiar. Its executive members do not cease to be such, because they are also legislators. We must banish from our minds the distinction which exists between "the executive" and "the legislative" in an independent Sovereign State. Members of the ministry in England are also legislators; but they are bound to carry out the wishes and policy of the Government or resign. So the position of a member of the Government of India as a legislator is secondary and subordinate to his position as a minister; the legislative capacity is but the necessary concomitant and complement of the executive or ministerial capacity. This is the recognised principle of British government in relation to other parts of the Queen's dominions, where the authority of the legislating body is derived from the Crown, and is not founded on the principle of popular representation. At the same time it could only be on rare and exceptional occasions that the Secretary of State would call on the Government of India to pass any particular measure; and the exercise of such a power, in the absence of special and urgent reasons, would probably be a straining of the constitution.

That the ultimate power rests with the Home Government of requiring the Governor-General to introduce a particular measure, and of requiring also the members of his Government to vote for it,* appears to be unassailable as an abstract proposition; but a frequent resort to this power would be a straining of the constitution, because it would reduce an integral part of the Indian constitution to insignificance, and would prevent the whole from working as

* See *infra* pp. 28 and 29.

designed. Parliament never intended * that the Indian Legislative Council (any more than the Executive Council) should merely register the decisions of the Secretary of State. No doubt the Secretary of State has the legal right to order the Government of India to do anything he pleases The Governor-General and Council are directed, by sec. 9 of 13 Geo. iii. c 63, "to pay due obedience to all orders received from the Court of Directors" (now represented by the Secretary of State); and 33 Geo. iii. c. 52, s. 65 † constitutes it a misdemeanour to "wilfully disobey or wilfully neglect to execute the orders of the Court of Directors." These words must be held to cover orders to introduce and pass a certain Bill as much as orders to perform any other act of Government. It would seem that members of the Government of India must obey the orders of the Secretary of State or resign; *but if the Government of India as a body were strongly of opinion that some order of the Secretary of State ought not to be carried out, they might be justified in appealing to Parliament with reference to sec.* 51 *of the Charter Act of* 1833 (3 *and* 4 *Will. iv. c.* 85).

It is the practice for the Government of India to inform the Secretary of State of proposed legislation; and the object of this rule is to prevent any conflict between the Indian and Home Governments. But the Secretary of State has no direct power

* The intention of Parliament may be inferred from the debates on the Government of India Bill:—The Earl of Derby said: "The Government of India must, as cannot too often be repeated, be on the whole carried on in India. . . . . I cannot help expressing my opinion that, with regard to the details of the Government of India, the less interference there is on the part of Parliament, the better prospect will there be of securing the happiness and contentment of the people of India." 3 Hansard, Vol. 151, 1448. Lord Broughton said he would keep the Government of India out of Parliament as much as possible. In the House of Commons, Sir Charles Wood said that it was essential that the proceedings of the Government of India should be reviewed by the Government at home. Mr. Bright "took it for granted that in future there would be more business done in India, and less at home ("no, no!"). Well, all he could say was, that if there was not more business done in India, and less at home, and the business at home confined to deciding upon great measures, and giving a veto or an assent, as the case might be, he could see no prospect of getting out of the difficulties in which we were now placed with reference to India." Viscount Goderich "thought the only sound principle to act on, was to leave questions of detail to be settled in India itself." Mr. Cumming Bruce said: "Sir Charles Metcalfe had recorded it as his opinion, that the real danger in the Government of India would be felt when party spirit in the House of Commons first acted directly on the affairs of India." Mr. Bright "was of opinion that unless you could get rid of nine-tenths of the matters which were referred to this country, you could never have a Government of India worth calling a Government."

† To the same effect is 3 and 4 Will. iv. c. 85, s 80.

to interfere and alter measures in their passage through the Council. It is true that it may be an accident whether a particular Act of Government is executive or legislative, and under the Indian Constitution there is, perhaps, less distinction between these two classes of Acts than in the constitution of any other country. Nevertheless, there is a distinction, and that of a well-known and well-defined nature. An analogy with judicial Acts is deceptive and misleading; a judicial body has merely to *declare* the law without regard for consequences, but a legislative body is subject to many influences, and a legislative Act is often a compromise, the outcome of a number of opposing forces. In fact, a legislator may sometimes have to sacrifice his own opinion for important State reasons. This is pre-eminently so in India. Still, the word "legislative" does connote a certain amount of independence.

What is the exact position of the Indian Legislative Council to the Secretary of State? The question is not free from difficulty, and it is necessary to drive the discussion further home before we can arrive at any clear and tangible proposition. As regards initiation, it is not possible to distinguish very materially between executive and legislative Acts in regard to the Secretary of State's right to be consulted, or at least informed before hand. Under the Company, Anglo-Indian officials were subject to a mercantile body; they were the servants of an absolute master. The Secretary of State has now taken the place of the mercantile body, and the above relations still remain, *so far as they have not been altered by Parliament.* Now the Indian Councils' Act has considerably altered the position. The functions of the various component parts of the constitution have been assigned by an Act of Parliament. This Act seems to throw the whole duty and responsibility of initiating legislative measures on the Indian Government. The only power which it reserved to the Secretary of State seems to be that of considering the measures as a whole, and of deciding as a whole whether they shall be disallowed or not. Section 22 of the Act empowers the Governor-General in Council to "make laws and regulations for all persons, courts, places and things whatever," a few subjects only being expressly excepted. By section 20 the Governor-General has the power to assent to a measure passed by the Legislative Council, or to dissent from it, or to reserve it for the pleasure of the Crown. It is only when he has assented that the Secretary of State comes in. By section 21 it is provided that, if he assents, he shall transmit an authentic copy to the Secretary of State, and then it is lawful for the Crown to signify its disallowance of the law through the Secretary of State in Council. It would certainly be unconstitutional, and it might also be illegal, for the Secretary

of State to insist on some particular alteration of a Bill during its passage through Council. He does not appear to be justified in interfering with a Bill during its progress. Granted that he can order the Governor-General in Council to introduce a particular measure. Still the latter body cannot be prevented from altering a Bill during its progress, and after any measure has been actually introduced, the Secretary of State in Council* has no *locus standi* until the Crown comes to decide whether the law should be allowed or disallowed.

In fact, the Councils' Act recognizes that there is a difference between executive and legislative Acts. The Councils' Act introduced three new elements into Indian legislation :—

1.—Oral discussion.

2.—Reference of Bills to a Select Committee instead of to a single member.

3.—Publicity of proceedings.

The element of publicity is of great importance, as it constitutes an additional check or sanction. Moreover, the notion of a legislature necessarily implies *some* independence, some relaxation of the control of the Home Government as regards matters which must be passed through the legislative machine. The word "machine," is not quite an apt word to describe the process of legislation. The difference between a particular executive or a particular legislative measure, carried out under orders from the Secretary of State, lies in the fact that the executive Act is, so to speak, the inevitable effect of a cause, whereas the legislative Act cannot be *purely mechanical.*

By the term "Indian Constitution," we mean to express the scheme of government for India which has been laid down by Parliament, and which, of course, Parliament may alter from time to time. In distributing the functions of government in regard to legislation, Parliament has in clear terms directed that the initiative should rest with the authorities in India, while the power of veto rests with the Secretary of State as the responsible adviser of the Crown. That Parliament did not intend that the Secretary of State should ordinarily interpose at any earlier stage, may be inferred from the fact that the Councils' Act makes no provision for such interposition. It is important that the body which legislates for India should be as free as possible from English political and social influences, and nothing but the strongest reasons of imperial urgency could justify the English Government in bringing such influences to bear on Indian legislation.

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* Not the Secretary of State, be it observed. See sec. 21 of Indian Councils' Act.

But there is another aspect of the question, and the question itself is one of such importance that it is necessary to consider it from every possible point of view. Her Majesty's Government in England are as much responsible to Parliament for the proper government of India, as they are for that of any of the Crown colonies of the Empire. The responsibility is even more complete, inasmuch as it is armed with a more powerful sanction. The authorities of a Crown colony would only incur administrative censure for disobedience to superior orders; but the authorities in India would be liable to prosecution and punishment for a misdemeanour at law.* The constitutional responsibility of Her Majesty's Government is complete and constant, because the action of the Government of India on the most vital questions may at any time be challenged, and motions of censure made in the House of Commons; in which case the policy pursued must be defended in detail by the representatives of the Government in debate, and the motions of censure are submitted by a division to the judgment of the House. The only responsibility known to Parliament is that of the responsible ministers of the Crown,† and it is the superintending authority of Parliament which is the reason and the measure of the authority exercised by those ministers. If the one power is limited, the other must be limited at the same time.

This being so, it is obviously essential that there should be a complete concurrence between the Home and Indian Governments. It would be most detrimental to the public interests that there should be any conflicts of opinion between them, and such conflicts can only be prevented by securing the fullest communication before any final step (executive or legislative) is taken. Indeed, the necessity for a clear preliminary understanding is stronger in the case of legislative measures, as they are less easily disallowed than executive proceedings. It is far better that any particular measure should be withdrawn or modified before it has been launched in the Legislative Council, than that it should be disallowed after it has run the gauntlet of discussion in Council, of Select Committee, of publication and of criticism by local authorities and the Press. Disallowance generally implies open condemnation, and publicity and emphasis are thus given to the divergence of opinion between the Home and Indian Governments.

* 3 and 4 Will. iv. c. 85, s. 80.

† In the debates on the Government of India Bill, Sir Charles Wood said that the Minister for Indian affairs should be responsible to the Crown and the country; the Council of India was only to give him assistance. Viscount Palmerston said: "We are all agreed that the Home Government of India shall be managed by a Minister who shall be responsible to Parliament."

It is therefore, better that the Indian Government should not publicly pledge itself until it has procured the approval of the Home Government. If this is done, there is little danger of the dignity and position of the Governor-General being injuriously affected. The words of the 39th section of the Charter Act of 1833 are as follows: "The superintendence, direction, and control of the whole Civil and Military Government of all the said territories and revenues in India shall be vested in the said Governor-General in Council." The Court of Directors, in sending out this Act to India, wrote as follows: "The powers here conveyed, when the words are interpreted in all their latitude, include the whole powers of government, and it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole Civil and Military government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you." But circumstances have changed since then, owing to the following new factors, among others; the growth of public opinion, a free press, greater facility and rapidity of communications, increased knowledge of Indian affairs in England, the more frequent interference of Parliament, and the necessity for ruling British India on the same imperial lines as the rest of the British colonies and possessions. The Indian Legislature is intended to be, and must in the nature of things be, an official Legislature. It is not even like the Legislature of a colony with a representative assembly. It is not permissible to it to legislate on lines and principles contrary to those laid down by the Home Government. The Governor-General and the members of the Executive Council are appointed by the Crown, and additional members are appointed by the Governor-General. All official members may be removed at the pleasure of the Crown. The Government can always pass into law a measure on which they are agreed; and if they are not agreed, the Governor-General may, in urgent cases, override his Council (33 Vic. c. 3, s. 5). He may also, "in cases of emergency" (24 and 25 Vic. c. 67 s. 23) make ordinances having the force of law for six months. Having regard to these facts, it would be erroneous to describe the Indian Legislative Council as an independent legislature.

From the foregoing the following propositions may be laid down:—

1. The Secretary of State has a right to be informed beforehand of proposed legislative, as of executive, acts of importance; so that the Home Government may have a chance of intimating approval or disapproval.

2. Subject to this right, the Government of India can initiate any legislation it pleases.
3. The Indian legislature is mainly an "official" legislature: it is not an independent legislature in the strict sense of the term.
4. The Secretary of State can order the Government of India to pass a particular legislative measure, (and he can require Government members to vote for it.)* If he were to do so in the absence of urgent reasons, it would probably be a straining of the constitution.
5. The Indian Councils' Act recognizes a distinction between "executive" and "legislative" Acts. Legislation connotes *some* independence; and the Secretary of State has no direct power to interfere and alter measures during their passage through Council.
6. Non-official members may vote as they please.

V. Extent of Independence of Local Legislative Councils.

A persual of the Indian Councils' Act is sufficient to show that the legislative powers of the Local Governments are more closely subordinated to the Government of India than are those of the Government of India to the Imperial Government. In the former case a law is not valid until the Governor-General has assented to it; in the latter case the Secretary of State's assent is not needed, though he can disallow it. It is less difficult to refuse assent than to disallow. Moreover, the list of subjects on which a Local Council cannot legislate, without the previous sanction of the Governor General, is somewhat comprehensive (24 and 25 Vic. c 67 s. 43), while it cannot affect any Act of Parliament, or, any Act of the Governor-General in Council passed after the Councils' Act came into operation (1861), nor can it affect *in malam partem* the jurisdiction of the High Courts.

The necessity for the Government of India settling before hand with the Home Government the policy of all important measures has been discussed above; and Local Governments are even more bound to inform and consult the Government of India. When sending out to India the Charter Act of 1833, the Court of Directors said.—

> "It is evidently the object of the present Act to carry into effect the intention of the Legislature to which we have alluded.†

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* Perhaps the sentence in brackets requires some modification or qualification. It is further considered in the following parts.

† That is, an intention to give the Governor-General in Council "a control and superintendence over the other Presidencies as complete and paramount as it was possible for language to convey."

Invested as you are with all the powers of government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars the powers of government can be best exercised by the local authorities, and to what extent and in what particulars they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it."

Under the Indian Councils' Act the power of initiating local legislation is given to local Legislatures (sec. 42) whilst the power of withholding assent is reserved to the Governor-General (sec 40). Now two not altogether compatible objects have to be aimed at—

1. The Government of India must have some opportunity of examining local Bills beforehand with a view to see if they are in any way objectionable, that is, of such a nature as to render it probable that the Governor-General will be unable to accord his assent to them when passed :
2. At the same it is essential that the Viceroy should keep himself unfettered to consider each Bill, after it has passed the local Legislative Council in the light of the discussions which may have taken place in that Council, in the press, or elsewhere.

The power of a local legislature to initiate legislation is, *so far as law is concerned*, limited only by sec. 43 of the Councils' Act which prohibits the undertaking of legislation regarding eight specified subjects without the previous sanction of the Governor-General. But under orders of the Government of India all Bills containing penal clauses, must be first submitted for previous sanction. As a matter of *practice*, however, apart from *statutory direction*, all Bills, broadly speaking, are submitted to the Government of India. The practice is much the same in the case of all local Legislatures. As regards Bengal, the Government explain to the Government of India the nature, scope and objects of any measure they propose to bring forward, stating at the same time the date on which they propose to bring it before Council. A draft Bill is not necessarily submitted. No particular reply to such a communication is expected, but the local Government waits a certain time to give the Government of India an opportunity of making any objection. If no instructions are received which preclude the Government from proceeding

with the proposed measure, it is introduced in Council, accordingly. It may be said that such a procedure fetters the discretion, and lessens the independence of the local Council. But the local Council is no more independent than the Supreme Council. Indeed, it is less so. Nor need preliminary advice and intelligence be followed by unnecessary interference or unconstitutional dictation on the part of the Government of India. Such advice and intelligence is required not more on imperial grounds than in the interests of provincial Governments. It enables the Government of India so to exercise their power of interference as to obviate, by timely and judicious criticism, the possible necessity for ultimate disallowance.

It is highly desirable, on all grounds, that all local Bills should be submitted to the Government of India previous to their introduction in Council; and reading one statute with another, it is hardly too much to say that the Indian constitution requires that this should be done English constitutional ideas must not be rashly applied. "Executive" and "legislative" are far more distinct terms in English than in Indian constitutional law. *In India the legislature, is but the executive acting publicly, with a few additional checks or sanctions in certain matters which are beyond the competency of the Executive Government acting alone.* The arguments adduced above to show the subordinate position of the Government of India to the Home Government, apply with even greater force to Local Governments in their relation to the Government of India.

When Bills are before local Councils all latitude of discussion is allowed; but, of course, the President may at any moment interpose, like the Speaker of the House of Commons, to prevent objectionable language or irrelevant discussion. A good deal of fault has been found from time to time with local legislation, but some at any rate of the objections are not of much importance, being objections of form rather than substance. The following objections or criticisms may be mentioned:—

1. Some local Acts, dealing with similar subject-matters, are almost identical, and the Indian statute book has thus, at some waste of time and expense, been encumbered with several enactments when one general measure would have sufficed.
2. The wording and structure of the Acts of one local Legislature differ from those of others, and from the Acts of the Governor-General in Council.
3. The wording of local Acts is sometimes loose and ambiguous, and in some cases the want of arrangement is such as to lead to confusion.

4. Some Acts are needlessly inconsistent with others of the same kind.
5. There is a decided want of harmony in the principles underlying the enactments of the various Indian Legislatures.
6. The subjects proscribed by sec. 43 of the Councils' Act are sometimes touched without the previous sanction of the Governor-General in Council. So, either from ignorance or carelessness, Acts are passed, which affect *in pejus* the jurisdiction of a High Court, or alter some Act of the Governor-General in Council passed subsequently to 1861.

The first objection is of no value. It is laid down in the Secretary of State's despatch, which accompanied the Councils' Act, that the Supreme Legislature should not interfere with matters of local administration. The objection seems to assume that all legislation should be general and uniform for all parts of India, but the same despatch lays it down that "the circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character, and it will be no ground for condemning a measure for any particular subject passed for one Presidency that it differs in some respects from another measure on the same subject for another Presidency." A want may be felt in one Presidency and not in another. The second objection also is unimportant.

There is some truth in the third and fourth objections, the reason being that Acts are sometimes drawn by persons, who have but an imperfect acquaintance with the *corpus*—a very vast *corpus* now—of Indian law. In my article on "Indian Codification" occurs the following passage in this connection: "The Indian draftsman must not only know what to say, but also what to abstain from saying; and this knowledge can only be obtained by long study and residence in India. To draft even the simplest Act, the draftsman must have at his finger's ends the whole body of existing law on the same subject. The Indian draftsman should know the statute law, the case-law, native law, and local usage, as well as the English statutes and reports as are known to Parliamentary draftsmen." A Legislative Secretary, intimately acquainted with every branch of the administration, is as much a *sine quâ non* for a local Council as for the Supreme Legislature. Acts will certainly be best drawn by persons who are on the spot, and who are thoroughly acquainted with the existing state of the law, the objects it is intended to effect, and the habits of those to whom the law is to be applied.

The fifth characteristic (where it exists) is but the natural consequence of having different local Legislatures to make laws for different parts of the country varying much in their circumstances and condition. This objection is vague, and there does not seem to be much meaning in it. Octroi duties, for instance, are found suitable to some provinces and not to others. To prevent experiments in administration being made until they are universally approved, would often be to defer them for ever; the alternative of forcing on a Presidency a policy which it disapproves, is the very evil which the Indian Councils' Act was intended to prevent. At present each Presidency experiments upon itself for the benefit of all India. It would be impracticable to pass a uniform sanitation Act for the whole of India; but the fact that one Province does not desire systematic sanitation is no reason for depriving another province of it.

As to the sixth objection, it cannot be said that local Legislatures often make mistakes in the points referred to. Errors, however, are committed sometimes, the most recent instances being the Calcutta and Bombay Municipal Acts, to validate which a special Act (XII. of 1888) had to be passed in the Supreme Council. But it is doubtful whether even thorough familiarity with Indian law, and particularly Constitutional Law, could prevent the occasional occurrence of such mistakes. For instance, very difficult questions may arise as to whether a local Legislature can extend the territorial operation * of an Act of the Governor-General in Council which it is not competent to amend, or as to whether any particular provisions should or should not be construed as taking away any of the jurisdictions conferred on a High Court by the High Courts Act, or by Letters Patent.†

As has been remarked above, almost all local Bills ought, before they are introduced, to be sent to the Government of India for consideration or at least information. But it may be said that, in the case of measures of wide extent and complexity, the Select Committee often make very substantial amendments and alterations, which render it advisable that the Government of India should see the Bill again after the Select Committee have done with it. To make any such rule

* I, of course, do nor refer to such Acts as the Easements Act, in which power is specially given to Local Governments, to extend to their territories whenever they think fit.

† An Act which merely removes the possibility of some contingencies arising, on the happening of which a High Court might exercise its powers on the original side, or on hearing an appeal, in other words, which merely affects the extraordinary or appellate jurisdiction of a High Court, would probably not be held to take away any of the jurisdiction of the High Court.—8 Bom. H. C. R. 195.

would not only savour of excessive supervision and undue interference, but (I speak from personal knowledge of the Bengal Council) it might not always effect the object aimed at. In the Supreme Council, nearly every Bill is substantially passed as arranged by the Select Committee; specific amendments may be subsequently introduced, but there is no close examination and revision of the whole Bill. The procedure of the Bengal Council, on the other hand, very much resembles that which obtained in the Council of the Governor-General prior to the passing of the Councils' Act of 1861. Every Bill is subjected to careful examination and revision throughout by a Committee of the whole Council after it comes from the hands of the Select Committee, and a Bill frequently undergoes material alteration as to arrangement, wording, *and substance*. It follows that it might, in certain instances, be no good to send to the Government of India the Bill as revised by the Select Committee, as the Council might set aside the suggestions and amendments of the Select Committee. There are doubtless evils in the independence and free discussion of local Councils, and those evils may become intensified in the future. But there are corresponding benefits also, namely, publicity, popularity, adaptation of laws to the special wants of a Province, and that heightened interest in local matters which results from being uncontrolled in dealing with them. * These benefits would be much diminished by an anticipatory *censorship* on the part of the Government of India. I purposely use the word censorship as connoting a minute, unnecessary, or vexatious interference. But a preliminary inspection of policy and principles is obviously indispensable on broad grounds of State necessity, and is in accord with the constitution.

All local Bills are submitted not only to the Government of India, but to the Secretary of State also, the Governments of Madras and Bombay submitting their Bills direct. A local Bill is submitted either generally for approval, or specially for sanction under the 43rd section of the Councils' Act, or for consideration of penal clauses. In any case it is the practice for the Executive Department to consider it from an administrative point of view, and it is then sent to the Legislative

* Rapidity of legislation would be, it was hoped, one of the characteristics of local Councils; and until comparatively recently, has been so. But the cloven foot of the "debating Society element" (which proved so disastrous in the Supreme Council before 1861) is beginning to make itself apparent. This element, however, can always be kept in check by the power which the President has of framing and altering, as circumstances may demand, the Rules of business. The present Rules, if properly observed and enforced, ought to be sufficient to prevent waste of time.

Department for examination as to whether there are any objections to it, other than objections on grounds of policy. But a communication conveying approval of the penal clauses of a Bill does not imply the expression of any opinion on the part of the Governor-General upon the other portions of the Bill. The Home Department is always at liberty to note any administrative defects in a measure for the Governor-General's information, while the Legislative Department considers if it is in any way *ultra vires*, or inconsistent with the general principles of Imperial Legislation. It is for the Governor-General to decide whether objections are to be communicated to the Local Government, and if so, in what form.

As regards the transmission of Bills to the Secretary of State, the Legislative Department simply acts as a post office. In the examination of local Bills, and in any communications to the local Governments which may appear necessary on such examination, one important point is always kept in view, and that is, that nothing should be done which would tend to fetter the Governor-General in the final exercise of his power of veto, after he has had before him the discussions in the local Legislature and the comments of the public.

VI.—Position of Official Members of Legislative Councils.

Ought the members of the Governor-General's Council to follow the rules and practice of the English cabinet, and exhaust all differences of opinion on important Government measures by discussion in the *Executive* Council, so that they may act with thorough unanimity in the Legislative Council? Is a Government member at liberty to oppose a Bill, because he strongly objects to it, or is he bound to abstain from opposition?

The rule * that a Government member should not appear as

* "Rule" is hardly the word to use; but the intention of Parliament may be inferred from the debates that took place. 3 Hansard, 154. The Earl of Derby said: "When I look at the mode in which the Council is to be constituted, and see that one-half of the members who are to be added, may be persons holding official situations, and that the whole of them are to be selected by the Governor-General himself, I think there is no danger of the Council exhibiting a great appearance even of independence, or at all events of hostility to the Governor-General, or any desire, even if they had the power, of overruling any decision of his. On one point, I believe, there is no difference of opinion—namely, that the Legislative Council, as lately constituted, not by the intention of Parliament, but by the course pursued in India and acquiesced in here, ought not to be permitted to continue—that the system of a little mock Parliament is wholly unsuited to the circumstances of India, and to the position which the Council occupies there." Earl de Grey and Ripon said: "To the objection that the Council, as proposed to be constituted by the Bill,

an opponent of a measure, which the Government of India as a whole think ought to be passed, is reasonable and sound. But the rule cannot be pushed so far as in England, as it is not practicable to offer to the members of the Government of India the same alternative which is offered to English cabinet ministers. Divergencies of judgment in the secret Executive Council of the Government of India are far less serious than open differences of opinion in the Legislative Council. It is the open differences which become publicly known, which tend to prevent cordial co-operation between members of the same Government. The bitterness of feeling which prevailed at Lord Liverpool's death among the members of his cabinet has been attributed, not to the internal discussions of the ministry, but to the fact that these discussions were constantly kept before the public in the debates on Roman Catholic emancipation. Such open differences of opinion must have the effect of weakening the power of the Government to discharge its executive duties, which are its really important duties. In a country like India, especially, where such large and positive inferences are commonly deduced by the public and the press from facts insignificant or imperfectly ascertained, it is almost certain that public opinion, both native and European, would argue from frequent differences in public to frequently divided counsels in private, and thus the executive action of Government would run some risk of not being believed to have emanated from that concentrated purpose which is the first condition of its effectiveness.

But it may be argued that the analogy of the English cabinet is hardly apposite. The cabinet represents a party, and has to carry out a party policy in the face of a watchful and generally

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would prove more unmanageable than the present Council, he could only reply that the members of the existing Council held their seats *ex officio* and were appointed by other authority than that of the Governor-General; whereas the additional members of the proposed Council would be selected by the Governor-General, and would hold their seats for only two years. . . . . It was scarcely possible to imagine a case in which the selected members, one-half of whom were to be persons actually in the Service, would combine to defeat a Bill brought forward by the Governor-General; but, if such a case did occur, it would afford tolerably strong grounds for supposing that it was not altogether desirable that the measure should be passed." On the other hand, I find the Earl of Ellenborough said: "Now, their Lordships could hardly be aware of the entire and absolute independence of the gentlemen of the Civil Service. They might depend on it that they could not induce gentlemen of high character and station in the Civil Service to enter the Council if it was thoroughly understood that they were always to vote with the Government. . . . . If they gave the Governor-General in Council the power to make an ordinance which would last for six months, that would be quite sufficient to meet any misconduct of the Legislature."

hostile opposition ; the Governor-General's Council is not constituted for party purposes, and differences of opinion need not necessarily engender bitterness of feeling, as they neither endanger Parliamentary seats nor places under Government. In the Indian administration, there is not, or ought not to be, any opposition for opposition's sake, which is so lamentable a characteristic of Parliamentary Government in England. Nevertheless, differences of opinion constitute an element of danger, and if they were marked or frequent, might necessitate a change in the *personnel* of Government.

Let us take the case of the Governor-General's Council. Ought it to be allowable for members of the Executive Council to oppose, openly, at a Legislative meeting, an important Government measure, the expediency and necessity of enacting which have been deliberately affirmed by a majority of the Council, including, of course, the Governor-General ?* It would certainly be inexpedient and impolitic for a dissentient member (or even a dissentient minority) thus to make known and accentuate a difference of opinion. It might be productive of great mischief if a new tax, proposed after mature consideration, and perhaps in a serious financial crisis, with the assent of the Governor-General and a majority of his Executive Council, were to meet with public and open opposition from a dissentient minority of that Council. Much more disastrous would it be in the case of some measure, on which the public peace or the safety of the Empire depended. There are strong reasons why a high and unselfish consideration of duty should lead a dissentient member (or a dissentient minority) to defer to the opinion of the Governor-General and the majority of his Council. These reasons are in part incidental to the constitution. It must be borne in mind that the constitution allows the Governor-General to override his Council in certain matters. A majority, which includes the Governor-General, is a peculiar and emphatic majority. It is quite impossible, as far as important measures of policy are concerned, to distinguish between those which do, and those which do not require legislation ; a Government Bill is simply a means of carrying out an order of the Executive Government that a new law be made or the old law altered in some particular.

The authority of the corporate Executive Government over its members in their legislative capacity is one of the elements of the Indian constitution, and is merely the result of a number of Parliamentary statutes. Any other doctrine would be

* If the Governor General were opposed to a Bill, it would not be introduced as a Government measure.

antagonistic to and subversive of the constitution. If unlimited liberty to oppose is conceded, unlimited liberty to propose must also be conceded. Could a member of Council, apart from the wishes of the Government of India, propose in the Council Chamber the abolition of ecclesiastical offices, the repeal of the income tax, or the imposition of a tax on marriages, tobacco, or pân? Clearly not. If, then, the negative policy of the Executive Government is to prevail against an individual member, it would seem to follow that its affirmative policy should similarly prevail. At the same time it is open to a dissentient member to record his dissent in an executive minute; and if legislation were not urgent, it might be proper for the Governor-General and the majority to refer the question for the orders of the Home Government.

But no definite or rigid rule can be laid down for all cases. There are questions in which the province of politics or pure administration touches and overlaps the region of morals. It would be impossible to argue that a man is bound to vote against his conscience or against his convictions in a question of morality or religion. I use the word morality in its narrowest sense. But such questions would rarely occur. Apart from such questions, or in other words, in all questions of pure administration, it would appear to be the duty of a dissentient member, not only to abstain from opposition, but to support an important Government measure by his vote. In fact, it appears to be the ordinary rule, that members of the Government should exhaust all differences of opinion in their executive discussions, and then act together in the Legislative Councils in accordance with the opinion of the majority.

The above remarks and conclusions are equally applicable, and for the same reasons, to the Councils of Madras and Bombay. The neglect of the rule has recently interfered seriously with the legislative efforts of the Bombay Council. It would lead to serious scandal and complications, if a member of a provincial Council could defeat a policy, which had been approved not only by his own Government, but by the Government of India and the Secretary of State in Council. The Government members of a Lieutenant-Governor's Council are or should be even less independent than the members of a Governor's Council. In Bengal, the Government members generally include a member of the Board of Revenue, the Legal Remembrancer, a Secretary to Government, and the Head of the Education Department. The Advocate-General is by statute a member. There is probably more freedom and latitude of discussion in the Bengal Council than in any other Council. This is, perhaps, natural

in the metropolis of what is, in one respect,* the most advanced province in India. Amendments brought forward by native members are sometimes supported by official members, even when those amendments substantially alter the policy of some particular provisions of an Act†. Such independence may, in the case of certain measures, improve the quality of legislative work; but official members should not forget that it is their duty to support the Head of the Government in those cases in which he is of opinion that it is essential, in the interests of the Empire or of the Province, to pass a particular measure, or at least some portions of it intact. A local Bill must after all run the gauntlet of three assents, those of the Lieutenant-Governor, the Governor-General, and the Secretary of State, and in deferring to the opinion of the Head of the Government in important measures of policy, an official member merely evinces his appreciation of the fact, that it is useless and unjustifiable to kick against the pricks of the constitution.

Local legislation has, from time to time, shown that members of local Councils are not so familiar with the written constitutional law of India as they might be. I state this fact with all deference. A powerful Legislative Department forms an integral portion of the Government of India. Important matters in other departments are sent to the Legislative Department for opinion or revision, and in this way the members of Council and Secretaries of all departments can, and do without any special study, become acquainted with a considerable portion of Indian Constitutional Law. There is no such Department in the Bengal Government, the Assistant Secretary being merely the clerk of the Council.‡ It may be said that the Government has its Law officers; but unfortunately, innocence of the very rudiments of Constitutional Law seems to be no obstacle to appointment to the post of Advocate-General.

To sum up what are the possible courses, I will not say open to, but to one of which an official member should resort, when he disagrees with a Government measure brought forward in the Legislative Council:—

1. He may be present, and oppose the measure by argument and vote.
2. He may be present and give a silent vote against it.

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* In respect, I mean, of higher education. Madras is far ahead in primary education, and several Provinces are ahead of Bengal in material progress.

† I might instance some of the amendments (notably those regarding the principles of taxing house-property in the native town) during the passage of the Calcutta Municipal Bill of 1888.

‡ He is never required to note, from a legal or constitutional point of view, on proposed administrative acts or measures.

3. He may be present and give a silent vote for the measure.
4. He may absent himself.

Of course it is out of the question to expect a member or responsible official of Government to *speak* in support of a measure to which he is opposed, though this is sometimes done in the House of Commons.

The fourth course is to be altogether deprecated, as it might create an altogether erroneous or exaggerated idea of the extent of difference of opinion. The third course would appear to be incumbent in all cases in which the Governor-General and a majority of his Council (or the Lieutenant-Governor) were of opinion that it was necessary, for the safety or interests of the Empire, to pass a particular measure. Indeed, even less urgent State reasons (*e. g.* a question of taxation) would seem to point out this course as the one to be followed in the very large majority of instances. The first and second courses appear to stand together; from the point of view of a member's duty, there does not seem to be any material difference between them. I mean, that even the less marked opposition implied in the second course, would only be justifiable in those very exceptional cases, in which a serious question of conscience might be at stake; and if an official member might silently vote against a measure on strong conscientious grounds, most Englishmen, I apprehend, would be in favour of allowing him also to speak against the measure, as that might be the only means of satisfying some consciences.

VII.—Additional Members of the Governor-General's Legislative Council.

These members are either official or non-official. The former are Government members and, as such, their position and freedom are of the same character and extent as that of members of the Executive Council. Non-official members are quite independent and vote as they please.

It has sometimes been supposed that an official additional member, selected for his knowledge of some particular province, is the representative or mouth-piece of the administration of that province. This view is not correct, and it is in no way supported by the language of the Act under which additional members hold their offices. But if an official additional member is, as is generally the case, in charge of a Bill especially affecting the local interests of his own province, it is no doubt advisable that he should communicate freely and personally, but unofficially, with the Head of the Local Government, the Board of Revenue, or any other body or officer possessing special knowledge of the subject-matter

of the Bill. But all official communications are addressed to the Secretary to the Government of India in the department to which the particular business appertains.

The Home Government attaches a good deal of importance to the attendance of the non-official additional members at deliberations of the Legislative Council. But having regard to the actual experience of the past, it may well be doubted whether the value of such attendance has not been overestimated. However, in pursuance of the views of the Home Government, regular legislative sittings are held in Calcutta, and all measures of great importance are then enacted. Measures relating to individual provinces under the Government of Indian (*e. g.* Assam and the Central Provinces) are generally passed at Simla, and the period of residence there is also properly devoted to the executive preparation of legislative measures, which are afterwards discussed and enacted in Calcutta. The technical details of heavy Bills are also dealt with at Simla, and laws arising out of any emergency are, of course, framed as and whenever the necessity arises. Official additional members are, as a rule, only summoned to Simla for the purpose of preparing and working out the details of measures in which special or local experience is required; and their assistance in this respect enables the Legislative Department to get through work which unaided it might not be able to accomplish within the required period.

Simla vs. *Calcutta as the Seat of the Indian Legislative Council.*

It may, no doubt, be conceded that the spirit of the Indian Councils' Act of 1861 would be violated by any system of legislation which did not admit of the attendance at Legislative meetings of the *largest* number of additional members of Council *possible under the circumstances*; and any method of transacting legislative business, which prevents the attendance of these members, would no doubt defeat the intention of the Imperial Legislature. The question is, whether Calcutta is as convenient a place as Simla. European mercantile members can only attend in Calcutta: but Simla is probably more convenient for other non-official members. The objection to Calcutta on the score of health is, perhaps, not so strong as it used to be, but it has by no means passed away. There have been two instances of native members from other Provinces having fled after attending only one legislative sitting, and natives, other than Bengalees, still have a prejudice against, and a dread of remaining long in Calcutta. There is at present a demand for more representation of the educated classes, and there can be little doubt that non-official native members

from all parts of India except Bengal) would more readily attend at Simla than at Calcutta. A discussion whether Simla or Calcutta is the better for the sessions of the Legislative Councils brings us perilously near the Hill-exodus question, which has been threshed out almost *usque ad satietatem*. Perhaps that question received a little extra light and illustration, when the High Court judges, and almost the whole of the Calcutta bar fled helter-skelter up to Darjeeling from the intense heat of June 1888, while officials in the mofussil, where the thermometer stood higher than in Calcutta, sighed with envy and wished that, like a certain High Court judge, they could declare their Courts closed till the ensuing rains. Members of Council cannot leave India, while High Court judges rush to England almost every year.

There can be little doubt that regular legislative sittings at Simla would be more likely to conform to the policy and wishes of the Home Government, as regards the attendance of as many non-official members as possible. The repugnance to the climate of Calcutta is not confined to Indians. It is shared by English statesmen, who are thereby deterred from accepting appointments in this country. The dignity and emoluments attached to high office in India would be sufficiently attractive to public men, if they were not accompanied by conditions which detract materially from their value. The objections against Calcutta are not exaggerated: a long series of broken-down constitutions and premature deaths cannot be reasoned away. When the question was discussed twenty years ago, it was shown that of the three immediate predecessors of Sir John Lawrence, one died in India, and two only survived to reach home; that Mr. Wilson died in his first year of office, and his successor, Mr. Laing, was forced to return to England in broken health the year after he came out. The High Court is not without its painful statistics of death and disease. Nor is the maintenance of Calcutta as the seat of Government called for by any considerations of State necessity or policy. The weightiest reasons for its retention are that it is the ancient seat of British Empire, it is connected with old associations, and a removal would involve heavy expenditure. All these arguments were for years urged against the removal of the courts of law from Westminster Hall, and yet that removal has at last been accomplished. If capital be taken to mean the actual seat of Government, Simla has now been an alternative capital for fifty-six years. Had Lord Elgin lived, he would never have visited Calcutta again, though three years of his term of office were still left. The theory that Calcutta was the capital, was, for a long time, preserved only by a fiction,

and a fiction so transparent that, but for the proverbial fascination and vitality of legal fictions, it is surprising any body was blinded by it. The Governor-General's Council remained there under a president, invested nominally with the full powers of the Governor-General in Council. In point of fact, however, a division of business was made between the Governor-General in the Upper Provinces and the President in Council at Calcutta, on the principle of leaving to the latter all business which was of a simple, routine or common place character. Every thing which was of importance went directly to the Governor-General.

This part of our subject may be fitly concluded by an extract from a minute written by the late Sir Henry Maine in 1868 :—

> "Discomfort and disease have so long been the conditions of official life in India, and so much admirable work has been done under those conditions, that there is a disposition in some minds to regard them as indissolubly associated with the good government of the country. Yet surely, in settling the question of the capital, it is unreasonable to leave out of account the discovery made thirty or forty years ago, that Nature has been less unkind to us than had been supposed, and that within the geographical limits of India there are climates in which the English race retains or regains its native vigour. I quite understand the necessity of guarding against the temptation to over-rate the value of these climates, and to under-rate the difficulty of utilizing them. Yet there may be prejudices of the opposite kind, and the censors of resort to the hill climates should be sure, that unconsciously they are not arguing as a conservative of the Spanish Indies may have argued against the use of the Jesuits' bark in fever, as a practice in itself effeminate, and calculated to excite *ill feeling in those who could not afford to purchase the new drug.* . . . . There is no economy which a Government can practice like the economy of its servants' health and nerve ; it may be compelled to expend them on mere resistance to unfavourable physical conditions, but if it goes an inch beyond absolutely necessary expenditure, it is guilty of the most foolish form of prodigality."

Sir Henry Maine mentions that Lord Elgin had intended to assemble in the cold weather following his death both the Executive and Legislative Councils in the neighbourhood of Lahore ; and had this idea been carried out, it is probable that each of the great Native cities would have been visited in turn. In this way the Supreme Government would have become peripatetic. "If," said Sir Henry Maine, "it be objected that there is no example of such a Government, I answer first, that the fact is not so, since almost all Governments originating in the conquest of hot countries by persons born in a cooler climate have been, as a matter of fact, more or less peripatetic, and that, even if the objection were well founded, the British Empire in India is too novel and

extraordinary an experiment to be dependent on any precedents, except those which its own experience furnishes."

VIII.—Discussion of Budgets.

It has been announced during the present year that there is to be a fuller and freer discussion of the Budget "under certain restrictions." What those restrictions are to be, is not yet known to the public, but it is said that the Home Government is in perfect accord in the matter with the Government of India, and that a Bill will be passed to legalize any alteration of the present system.

Some explanation of the present system seems here to be called for, because it is doubtless not generally known, that even this system is not strictly in accord with the provisions of the Indian Councils' Act (ss. 19, 29, and 38).

> "No business shall be transacted at any meeting for the purpose of making laws and regulations * * other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make, or for the Council to entertain any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereto." Sec. 29 enacts that the additional members are to be members of the Council, "for the purpose of making laws and regulations only."

It was stated by Sir Charles Wood that one of the objects of these provisions was to prevent the Legislature from interfering with the functions of the Executive Government, and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it. The Duke of Argyll said that the evils of the system established in 1853 was, that there was a tendency on the part of members of the Council to interfere with the executive acts of the Government. The grave complications which had occurred in the Governor-General's Council prior to 1861, owing to the unseemly arrogation of authority by certain of its members, had become a matter of notoriety, and hence the precision and stringency of these provisions to give effect to the deliberate intention of Parliament, that the Legislative Councils should not exercise any administrative functions whatever, or have any voice in the Executive Government of the country.

While the law* remains as it is, no statement or discussion of the Budget in Council can be legal, unless it have reference to some measure introduced, or to be introduced, into the Council for enactment. If any Bill involving the slightest alteration of taxation be introduced—if even the Income Tax Act had

* 24 and 25 Vic. c. 67, ss. 19, 38.

to be annually renewed as was formerly the case—a public financial statement and discussion would be legal. As a matter of practice, however, the Financial Minister makes his statement publicly, and this evasion of the Act has the sanction of the Secretary of State. Possibly Local Legislative Councils might be permitted to evade the Act in the same way, but they have not done so hitherto. If publicity is what is aimed at, it can be attained with equal certainty and less inconvenience by sending the Budgets to the press. They will thus obtain the widest publicity, and evoke (or at least afford an opportunity for) criticism from every class of the community. If it is desired to give an opportunity for discussion to the non-official additional members of Council, it should be borne in mind that this would do away with the power of the Governor-General, or a local Governor, to prohibit the discussion of topics which he considers undesirable, and so materially alter his position as regards his Council. It can hardly be desirable that the Legislative Councils of Madras, Bombay, Bengal and the North-West Provinces, should acquire a definite right to discuss and criticise the whole executive business of their respective Provinces in so far as they involve questions of finance. Their doing so might put the Supreme Council in a very false position. The value of criticism is much diminished when it proceeds from an irresponsible body ; and it cannot be too clearly kept in mind, that additional members of the Legislative Council are absolutely irresponsible for their acts or the consequences of their acts. They can neither be removed during their tenure of office, nor be held answerable for aught they do. It is anomalous and contrary to all sound principle to invest a body thus constituted, thus irresponsible, and without even a representative character, with the power to discuss, modify, and perhaps overrule the whole executive policy of the Government. "Parliamentary responsiblity," it has been remarked by Sir James Stephen, "arises from the fact that the man who is to-day in opposition may be to-morrow in power, and may then be obliged to act up to the principles which he has advocated when in opposition. This can never be the case in India. If Government were in a minority, it would not have to go out, nor would those who had succeeded in turning it out come in their turn. In this state of things it is obvious that the criticism of additional members is emphatically irresponsible. It is the criticism of persons who can never be called upon to apply their own principles to practice."

As a matter of fact, the proceedings of Legislative Councils in India are marked by a considerable degree of formality coupled with the utmost publicity. This formality, and this

publicity may not have been altogether contemplated by the Councils' Act of 1861, but *quod fieri non debuit, id factum valet.* It is too late to go back now. One of the chief objections taken by the Marquis of Dalhousie under the Act of 1853 had reference to the formality and publicity of its debates. Lord Canning was of opinion that the business of the new Legislative Councils should be conducted as in a committee or commission, and not in the form of a set Parliamentary debate; and in the dicussions which preceded the passing of the Act of 1861 in both houses of Parliament, reference was frequently made, mostly in terms of condemnation, to the numerous standing orders made by the Legislative Council of 1853, and the unwisdom of converting the Councils into petty mock Paliaments was constantly dwelt on. Yet, no sooner was the Act of 1861 brought into operation, than arrangements were made in each Council for prescribing forms of procedure very similar to those observed in other legislative assemblies; the proceedings were practically thrown open to the public, the admission of reporters was allowed, and all this was done under the authority of standing orders, which received the sanction of the Secretary of State by whom the Act was introduced. The fact is that Parliament endeavoured to reconcile two things which were irreconcilable, namely, the informality of procedure which obtains in a cabinet or committee (the proceedings of which are either strictly private, or if published, are published in an abstract form, or in the form of a report stating the *result* of the committee's deliberations), and the publication from day to day of the speeches delivered, and the remarks made, by the members of a Council. Lord Canning did not contemplate this latter arrangement, and it may be inferred from the opening speech of Lord Halifax in introducing the measure of 1861, that his views on this point coincided with those of Lord Canning; but when the question of the daily publication of the proceedings of the Council was raised in the House of Commons, the reply of the Secretary of State was to the effect, that this matter would be left to the discretion of the Governor-General. As we know, the result has been that the debates in the Indian Councils are published from day to day, and that the official reports of them are as full and detailed as Hansard's. The only trace that the reports bear of what appears to have been originally contemplated, is that they are headed "Abstracts of the Proceedings of the Council," the fact being that they are in no sense abstracts, but are full and complete reports.

This matter has been gone into at some length in order to show that the original design of the framers of the Councils' Act has already been widely departed from in one very important

point. In truth, the submission to the Legislative Councils of Budgets dealing with the finances of the country, whether imperial, or provincial, or local, is an arrangement which, so far as can be gathered from the debates, was not contemplated by the framers of the Act of 1861. Nevertheless, during the whole of the period which has since elapsed, the exposition of the financial measures of the year before the Council of the Governor-General has been an event of annual occurrence. These Budgets are not voted on by the Council, but they are liable to be subjected to criticism of a searching character in debates which are forthwith published and circulated throughout the country. And not only is there, on these occasions, a general exposition of the financial position of the Empire, but the several members of the Executive Government deliver expository statements of the operations of the several departments under their charge, which are similarly liable to comment and criticism from the other members of the Council. It is not only, then, in the form and publicity of the debates, but in the nature of the subjects brought under discussion, that there has been, in practice, a departure from the avowed intention of the framers of the Act of 1861.

In order to enable Local Governments to deliver themselves of "financial expositions" analogous to those in the Governor-General's Council, it was at one time proposed that an Appropriation Bill (the schedule of which would consist of the Budget) should be annually introduced, thereby enabling members, without any contravention of sec. 38 of the Councils' Act, to discuss each item. As might have been expected, this proposal was not considered advisable or even possible. The passing of the Appropriation Bill in the House of Commons is a proceeding by which authority is given to carry into effect the resolutions of the House passed in Committee of Supply, which, till the passing of the Appropriation Bill, are not law. The Bill enumerates every grant that has been made during the whole session, and authorises the several sums voted by the Committee of Supply to be issued and applied to each separate service. It also contains a provision that the various aids and supplies shall not be issued or applied to any other uses than those mentioned. It is obvious that such a proceeding would be utterly out of place in India, and would have the effect of removing from the Executive to the Legislative Council the power of disposing of public monies.

IX.—Publicity of Indian Legislation and Opportunities for Public Criticism.

It may safely be affirmed that there is no country in the world in which the public have such opportunities of having their

say regarding pending legislative measures as in India. In no other country are Bills made so accessible to the public, or at least to that portion of the public which has either the desire or the ability to criticize.

A Bill of the Supreme Council, together with a statement of its objects and reasons, is published in the *Gazette of India*. If the Bill is of any importance to the public, or any section of the public, it is also published in such vernacular languages as the Council may direct. Then the Select Committee's report must not be made sooner than three months from the date of the first publication of the Bill. Again, if a Bill is much altered in Select Committee, it is often republished in its altered form. In fact, publicity in India has been pushed to such an extraordinary length, that it has been accurately remarked, that it is a man's neglect alone which can prevent him from being in a position to consider any Bill on which he desires to form an opinion. The Government of India have brought the horse to the water, but they cannot make him drink.

In this matter, as in many others, the Government, being a bureaucracy, goes out of its way to avoid the imputation of legislating in an autocratic, bureaucratic or despotic manner. In theory, the vernacular translations of Bills are supposed to reach the native community at large; but those who are conversant with the administration, know that they only reach the comparatively educated few,* who would much rather have the English Bill than the vernacular. Even this small section often finds itself quite incompetent to criticise the scope and details of measures. In England no one dreams of inviting the opinion of every farmer or parish vestry on a measure dealing with land tenure, or codifying the criminal law. Only experts are consulted, as only experts could give an opinion worth having. In India, on the other hand, every provision is made for securing, or trying to secure the opinions of all sorts and conditions of men, of persons who in many instances have no opinion to offer, the subject-matter being altogether outside their ken. As to the people as a body, they are not reached by the vernacular Gazettes, nor is there any necessity to reach them in this manner. Even in European countries, no attempt is made, even by their Parliamentary representatives, to ascertain their opinions in nine cases out of ten; indeed, in many instances,

* What I mean is, that they are not wanted. A Mukhtar could get the vernacular translation, if he wanted it. But, as a matter of fact (excepting, perhaps, important subjects, such as landlord and tenant) criticism of a Bill in progress is a thing not "dreamt of in the philosophy" of even the more educated class.

the Parliamentary representative himself might not have any opinion, or at any rate not one worth hearing. But though the people in India are not reached by the vernacular Gazettes, it would not be true to say that the *vox populi* is untapped. It is tapped in a very few matters (*e.g.* tenancy legislation) by Pleaders and Mukhtars; but the principal tappers are the Magistrates and Collectors of districts, known as District Officers. This will be illustrated below.

In England the Government takes no direct steps to make the Bills before the legislature known to the public. They are not published in any Gazettes or newspapers. If a country gentleman wanted to read a particular Bill, he would have to write and get it from Messrs. Eyre and Spottiswoode, the Queen's printers in London. But it will perhaps be said that the public are made acquainted with pending or proposed legislation through the medium of the press. This is by no means always the case. A good many Bills of importance are passed into law which are not even so much as noticed by the press. Let me instance a most important Act, dealing with Criminal Procedure in Scotland, passed in the session of 1887. Mr. Ilbert, when he was Legal Member, had occasion to remark that Lord Cairns' Conveyancing Bill was criticized by no one outside the rank of professional lawyers, and by very few of them. His Settled Land Bills, which affect the position and powers of landed gentry throughout the country, met with little or no outside criticism. The Criminal Code Bill has been on the anvil and before the public for years; but the press has not taken the trouble to master its provisions. In India, when the legislature has under consideration subjects such as Trusts, Easements, or the Transfer of Property, on which only experts can give valuable opinions, the public are not merely invited, but they are almost forced to give their opinions. Even the most enlightened public bodies, such as the British Indian Association, have been unable to show a complete comprehension of such measures. The daily experience of the courts show that such acts are misapprehended even by native professional lawyers: and the absurdity of expecting valuable criticisms from ordinary laymen, native or European, hardly requires demonstration.

The remarkably "popular" character of Indian legislation is seen in the rule that *anyone* may address the Legislative Council regarding any pending Bill. The communication may be addressed either in the form of a petition to the Governor-General, or in a letter to the Secretary. *Such communications are actually circulated to members of the Council!*

Any more popular and democratic provision it is impossible to conceive. It must be borne in mind that Local Governments are always consulted, and this means that a large number of administrative officers are consulted, as also the Bench and the Bar. Moreover, numbers of public Associations, recognized by the various Local Governments, are also invited to express their opinions. The result has been that the Legislative Department has at times been almost overwhelmed with masses of voluminous comments, which naturally contain a good deal that is worthless. Of late years Local Governments have been compelled to consult only selected officers: but in measures of great importance, all officers are consulted. As long as the rule remains in force that all communications must be circulated to members of Council, it is obviously essential that the bulk should not be needlessly increased, so as to prevent the wheat from bring lost among the chaff. Congress orators have not realized what a *Magna Charta* the people of India possess in the right of the meanest subject to address and petition the Legislative Council, and to give his opinion on any pending legislation!

O fortunati nimium, sua si bona norint!

It has been remarked above that the *vox populi* is principally tapped by the Chief Executive Officers of Districts. All Local Governments are consulted by the Government of India. The former again call for reports from their executive (and in the case of legal measures, judicial) officers, and so the word is passed right along the line of the official hierarchy until it comes down even to the humble village Chokidar (policeman); and not only is information and criticism called for after the introduction of a Bill, but this is often done when it is merely proposed to legislate on a particular subject, and it is desired to ascertain whether it is necessary to legislate at all, and if so, on what lines. Let me give the most recent instance of this: The Government of India are considering the advisability of legislating about lepers, and a report has been called for as to whether leprosy has increased, and whether lepers are in the habit of annoying villagers by soliciting alms in a threatening manner or otherwise, and so on. Every District Officer has been called on for a report regarding his own district. He consults his Sub-Divisional* officers and District Superintendent of Police. The latter calls for reports from the Sub-Inspectors in charge of every thana (Police Station), and

* Districts are generally divided into several Sub-Divisions.

these latter get information from the village chokidars about every single village in their jurisdictions. The Government of India and local legislatures thus have no difficulty in procuring a mass of accurate information on any possible subject. In this way a rough census of lepers has been taken, and the feeling of the people in regard to them ascertained. And this is done through an agency familiar to the people and without any difficulty or special arrangements. The legislation of the Government of India is based on complete and accurate information, subjected to criticism and discussion by administrators of ripe practical experience.

The treatment of lepers is, no doubt, a question on which the meanest cultivator might have an opinion. Let us take the case of measures, which it would require some intelligence and education to criticise, such as the amendment of the Code of Criminal Procedure, or a Bill dealing with the relations of landlord and tenant. The vast mass of opinions and criticism on the Bengal Tenancy Bill, (passed as Act VIII of 1885) has susprised English lawyers. Apart from official opinion, all classes gave their opinions, Pleaders and Mukhtars, Zemindars, Middlemen, Mahajans and cultivators. Besides the large Associations which are consulted direct by the Bengal Government,* District Officers consulted every local body or

* The following is a complete list of the Associations in Bengal recognized by the Government :—

1. European and Anglo Indian Defence Association, Calcutta.
2. British Indian Association.
3. Eurasian and Anglo-Indian Association.
4. National Mahomedan Association.
5. Mahomedan Literary Society.
6. Suburban Rate-payers' Association.
7. Jessore Indian Association.
8. Moorshedabad Association.
9. Baranagore Rate-payers' Association.
10. Burdwan Association.
11. Utterpara People's Association.
12. Bali Sadharani Shaba.
13. Seebpore Rate-payers' Association.
14. Rajshahye Association.
15. Bogra People's Association.
16. Dacca People's Association.
17. East Bengal Landholders' Association.
18. Furreedpore People's Association.
19. Mymensingh Barnch Indian Association.
20. Mymensingh Landholders' Association.
21. Burrisal People's Association.
22. Islam Association, Chittagong.
23. Chittagong Association.
24. Bar Association, Noakholly.
25. Tipperah People's Association.
26. Behar Landholders' Association, Patna.
27. Indigo Planter's Association, Mozufferpore and Chumparun.
28. Bhagulpore Landholders' Association.
29. Orissa Association.
30. Balasore National Committee.
31. Serampore Mofussil Association.
32. Rohora Patriotic Association.
33. Santipore Rate-payers Association.
34. Howrah People's Association.
35. South Barrackpore Rate-payers' Association.
36. East Bengal Association.
37. Krishnaghar Rate-payers' Association.

petty Association in their districts. Sub-Divisional Officers convened special meetings at their houses, at which many of the provisions of the Bill were discussed by their own Amla, (ministerial officers), Mukhtars, petty educational officers, landholders and others. Even Chokidari punchayats * were in some districts invited to express an opinion. But this Bill was an exception. For a whole decade it had been proposed and intended to pass some remedial legislation in favour of the Bengal cultivator, so that landlord opinion was on the *qui vive*, and the forces of landlordism were strongly arrayed against the Bill. It was, perhaps, for this reason that officials felt compelled to take unusual steps for ascertaining the opinions and wishes of the cultivators themselves.

It is the same with Local Councils. If the records of the Bengal Council be referred to, it will be seen that, upon every local measure of importance, there has been a full and free expression of native opinion. Moreover, native opinion is sounded on any questions of importance on which legislation is likely to become necessary. There can be no harm in my adducing the most recent instance: It has been recognized that Municipalities and District and Local Boards are everywhere crippled for want of funds, and therefore cannot effect any great improvements. The Government thinks that the only solution of the difficulty is local taxation for local needs In this connection suggestions have been made, that the question of tolls on roads and bridges might be reconsidered, and also that of the imposition of octroi duties in Municipalities. On these subjects District Officers have been asked *not to give their own opinions*, but to ascertain enlightened *non-official opinion*. Probably in no country in the world is so anxious a desire manifested to legislate in accord with the wishes and sentiments of the people. This is, in a measure, owing to the fact that the Legislatures are official legislatures. Of the official legislators it may certainly be said that they are disinterested men, having no party to represent, with no desire but to benefit the country and the people, and do justice between class and class

As might have been expected, the desire of the Government to give the utmost publicity to its legislative measures, (whether as Bills or Acts) has far outstripped the necessities of the case. It was hardly necessary to translate such Bills as the Transfer of Property or Easements Bill at all. As has been remarked, the few natives competent to give an opinion on its provisions would know English, and would actually prefer to consult the English original. And yet not only was this Bill

* The agency appointed in each village or Union under Act VI, 1870, B. C., which assesses and collects the tax for the maintenance of the village Police.

published as first drafted, but it was again and again published as it underwent alterations. *Bill No. V, which was a very modified form of Bill No. III, was published in the following vernaculars: Urdu, Bengáli, Ooria, Hindi, Tamil, Malayalam, Telugu, Kanarese, Mahratti, Guzerati.]* Naturally all this expense was incurred for nothing; the only criticisms received were received in English. Measures of this technical and abstract character cannot be translated into the vernaculars in a satisfactory and intelligible manner. Highly educated natives aver that they find it impossible to convey in the vernacular the technical shades of legal meaning by mere translation, or by anything short of exposition, and that although to a man knowing English, and sufficiently acquainted with the English original, the vernacular translation *might* be intelligible, yet even such a man would prefer to refer to the English version. Urdu is the most polished and widely spread of the vernaculars of India, and constitutes, indeed, a sort of *lingua franca*. Yet even the translations in Urdu are often unintelligible and so full of inaccurate renderings, that it is no wonder that vernacular translations of technical Acts can hardly be understood even by native lawyers. As to Bengali, Ooria, Hindi, and Mahratti, the translators have had to have recourse to Sanskrit words to supply an equivalent for some of the English terms,—words, which to the mass of the people, are as incomprehensible as the English itself would be. So an Englishman of the reign of Henry VII, having to translate the present Italian Code of Commerce, would resort to Latin.

During the Viceroyalty of Lord Ripon, a laudable, but as events have proved, a futile attempt was made to make Bills and Acts even more accessible to the public than they had hitherto been. As regards the great codifying Bills in connection with which the question of publicity had arisen, both the Viceroy and his Legal Member recognized that, no matter how clearly they might be drafted, they were of such a nature that, even with the aid of the fullest explanations, none but experts could hope to master their contents sufficiently to offer any useful criticism on them; that similar measures met with little or no criticism in England outside professional circles, while in India, the prospect of obtaining useful criticisms was much diminished by the difficulties of translation above referred to. But, as regards legislation generally, it was desired to give the public the utmost opportunity of criticizing Bills in progress, and also to distribute measures passed into law as widely as possible.

The first aim of the Government was to give the Press all the information in its power as to the object and necessity of any proposed legislation. It was, therefore, decided to

publish a fuller and more popular Statement of Objects and Reasons, showing why a particular measure was required, and giving a short history of the circumstances which had led up to it, and an explanation of the effect it was likely to have on the subject matter and on the people. Pains were to be taken to make the statements as clear and intelligible as possible to the ordinary unscientific mind; and when the Bill had been brought in, the Bill itself and the Statement of Objects and Reasons, and (when this appeared desirable) the speech made by the member in charge in moving for leave to introduce it, were to be separately printed on cheap paper, so as to be available (with the vernacular translation), to the Press and selected public bodies. These were further to be sold at a low price to the public. They were to be procurable at all District Cutcherries throughout the country. Moreover, in order to encourage comments from the press, English and Vernacular abstracts of, or if necessary, full extracts from newspaper articles were to be circulated to members of the Legislative Council. Moreover, if the publication of any Bill in the vernacular was ordered, the Select Committee were always to state in their report the date on which the Bill had been published in such language, so as to ensure that the native community had had time to see and consider the Bill. It had been found that some delay occurred in bringing out translations of Acts passed, and it was therefore decided, whenever practicable, to allow an interval to elapse between the date at which an Act is passed, and the date at which it is brought into operation, so as to allow of sufficient time for the preparation and issue of translations, and for the preparation, issue, and due publication of the rules, without the help of which so many Indian Acts cannot be brought into effectual operation. At the same time it was not intended to prevent very short and simple, or very urgent Acts from being brought into force at once.

As regards the sale and gratuitous distribution, in a cheap form, of English and vernacular copies of Bills, Statements of Objects and Reasons, Reports of Select Committees, Debates, and Acts, it was settled that each local Government should make its own arrangements. The price of English copies was almost nominal, being only three pies per sheet of four pages, the rate decreasing if there were 64 pages or more. The whole set of papers published in a year was also made available to annual subscribers at the rate of *only two rupees*, exclusive of postage. The papers were to be printed by the Superintendent of Government printing at Calcutta or Simla. At the same time special arrangements were made in the Legislative Department to issue Urdu or Hindustani translations of Bills and connected papers and Acts, and also transliterated versions

of the same in the Nagri character. All these papers, in English or a vernacular, were to be obtained *at all Cutcherries throughout the country!* It comes to this, then, that every trader, artisan, and peasant in the country had the Bills and Acts of the legislature almost brought to his very door, for in India, broadly speaking, almost every peasant, and certainly every peasant who would be likely to require a copy of an Act, has occasionally to go to the District, or Sub-divisional, or Munsif's Cutcherry. The nominal price was intended to act as a sort of guarantee that the papers were required and not asked for from pure wantonness. In the same way missionaries, who preach in the bazars and villages, demand a pice for tracts, or the vernacular translation of a gospel, just to impose some sort of check on the wanton spoliation of their stock.

The Scripture tells us not to cast pearls before swine, and the Government of India, as might have been expected, failed in an attempt to secure universal criticism, such as no civilized country in the world has ever dreamt of making. As the sequel showed, the parturition of mountains brought forth a very ridiculous mouse. Year after year Bills and Acts and translations were made available for sale at the Government Cutcherries, and year after year the sales, at many places, were *nil*, while those in the most advanced districts were infinitesimal. In fact the whole business turned out to be such a monstrous farce, that in September 1888, the Legislative Department of the Government of India wrote and informed all local Governments that the supply of reprints and translations for *sale* would be at once discontinued, and asked whether, and to what extent, such supply for gratuitous distribution should be curtailed. The Collectors of districts in Bengal have reported that the documents are not merely unsaleable, but are not required, generally speaking, even for gratuitous distribution. The people in India have had opportunities of making themselves acquainted with, and criticising pending legislation, such as no other Government in the world has thought fit to grant. Fancy copies of Bills being available for sale in every booksellers' shop in small country towns in England! Even Justices of the Peace hardly ever see an Act, except the few they have to administer, much less a Bill. Imagine Bills being distributed in England by Government agency to petty attorneys, shopkeepers, farmers, and labourers, and yet this is what the Government of India has seriously attempted! Such ultra-Radical benevolence in an Oriental country indeed takes one's breath away.

The facts in connection with this subject cannot be too clearly demonstrated, because Government is sometimes blamed by men who are educated enough to know better. Errors

regarding the action of the Government in India are Protean in their variety, and possess the vitality of a hydra. I have therefore considered it necessary, in the interests of truth, and in vindication of the Government, to lay bare the incontrovertible facts. The importance of the subject is a sufficient excuse for my reproducing *in extenso* a return submitted from one of the largest, and certainly not one of the least important districts in Bengal. These statements were called for from every district :—

Statement showing the number of Printed Acts received and sold during the year 1888-87.

District.	Description of Acts.	Number.		Price per copy.			Number sold.	Value realized.	Number of copies remaining to be sold.	Remarks.
		Balance of last year.	Received during the year.	Rs.	A.	P.				
	Marriage Validation Bill, in Bengali	16	.....	0	0	3	...	...	16	
	Indian Salt Act Amendments Bill, in Bengali ...	16	.....	0	0	3	...	...	16	
	Transfer of Property Bill	16	.....	0	0	3	...	...	16	
	Telegraph Bill of 1884, in Bengali	16	.....	0	0	3	...	...	16	
	Bill to provide for the Registration of Permanent Tenures, in Bengali	16	.....	0	0	6		...	16	
	Bill to repeal part of Section 6 of the Indian Traffic Act, 1882 and to amend the Excise Act 1881 and the Bengal Excise Act 1878, in Bengali ...	16	.....	0	0	3	...	...	16	
	Indian Sea Passengers' Bill, 1884	16	.....	0	0	3	...	...	16	
	Bill to enable the Commsssioners of the Port of Calcutta to provide Docks	16	.....	0	0	3		...	16	
	Births, Deaths and Marriages Registration Bill, in Bengali	16	.....	0	0	6	...	...	16	
	Bill to amend Bengal Act III of 1879, in Bengali ...	16	.....	0	0	3	...	...	16	
	Canoongoes and Patwari Bill, in Bengali ...	16	... ..	0	0	3	...	...	16	
	Indian Contract Amendment Bill, in Bengali ...	16	.....	0	0	3	...	...	16	
	Land Acquisition (Mines) Bill 1885, in Bengali ...	16	.....	0	0	3	...	...	16	
	Report of the Select Committee, and the Bill to enable the Commissioner's of the Port of Calcutta to construct Docks, in Bengali	16	.....	0	0	3	...	...	16	
	Bill to regulate Ferries in Bengal, in Bengali ...	16	....	0	0	3	.	...	16	
	Indian Registration Bill, 1885, in English ...	2	.. ...	0	0	3	...	...	2	
	Indian Tramways Bill, 1885, in English ...	1	.....	0	0	9	...	...	1	

A Bill rendering it permissive to the members of the Mahomedan community to declare themselves subject to the Mahomedan Law, in English ...	3	... ..	0	0	3	...	...	.	...	3
The Provincial Small Cause Court Bill, 1885, in English	2	.....	0	0	3	...	...	..	..	2
The Income Tax Bill, 1886, in English	0	.....	0	1	3	...	...	...	..	0
The Debtors' Bill, 1886, in English ...	4	.. ...	0	1	6	...	...	...	..	4
Indian Bankruptcy Bill, 1886, in English ...	4	.....	0	6	0	...	...	..	...	4
The Guardians and Wards Bill, 1886, in English ...	4	...	0	1	9	...	...	...	..	4
Suits Valuation Bill, 1886, in English	4	.. ..	0	0	3	...	...	.	.	4
Criminal Procedure Code Amendment Bills, 1886, in English	4	.....	0	1	0	...	...	...	..	4
Native Passengers Ships Bill, 1886, in Bengali ...	13	.....	0	0	0	...	...	...	..	13
Bill to abolish Military Courts of Requests as established by the Indian Military Law ..	13	.....	0	0	0	...	...	...	..	13
Invention and Design Bill, 1887, in Bengali ...	10	.....	0	0	6	...	...	..	...	10
Indian Marine Service Bill, in Bengali	13	.....	0	0	6	...	...	...	...	13
Bill to amend the Indian Stamp Act, 1879, in Bengali	13	.....	0	0	6	...	...	...	...	10
Bill for the Protection of Game, in Bengali ...	10	.....	0	0	3	...	...	...	..	6
Inland Bonded Warehouse Bill, in Bengali ...	6	.....	0	0	3	..	...	...	...	6
The Metal Tokens Bills, in English	6	.....	0	0	9	...	..	.	.	2
Measures of Length Bill, 1881, in English ...	2	.. ...	0	0	3	...	...	...	..	2
The Probate and Administration Bill, 1888, in English	2	7	0	0	6	*5	...	.	.	2
The Succession Certificate Bill, in English ...	0	7	0	1	6	5	...	...		2

Memo. No.
Submitted to the Commissioner of the Division.

———MAGISTRACY,
The 1st May 1889.

Magistrate.

* Distributed to annual subscribers as well as to others gratis.

It will be seen that *only five* copies each of the Probate and Administration Bill and the Succession Certificate Bill were disposed of, and the note in the column of remarks shows that *these were not sold, but distributed gratis!* I find from the correspondence relating to this district, that the three principal men of the district are shown as subscribers, but apparently the copies were foisted on them *nolentes volentes*, as the sheristadar notes, in a somewhat naive Hibernianism: "These three are regular subscribers, *but they have never paid yet!*" Such, then, was the ludicrous anti-climax of the grand project for eliciting the opinions of all classes, even down to the school-master, the blacksmith, the Mukhtar, the cultivator, and the landless labourer, on Bills dealing with such matters as Taxation, Valuation of Suits, Native Passenger Ships, Inventions, Marine Service, Probate and Administration, Succession Certificates, Bankruptcy, the Port of Calcutta, Easements and Transfer of Property.

The British Government in India has enemies even among those who eat its bread and salt, and this renders the guidance of the ship of State all the more difficult; but while steering clear of the Scylla of conservative prejudices and opposition to all reform, it should take care not to be sucked in by the Charybdis of radical nostrums. They should view with suspicion the so-called panaceas propounded by philanthropical and irresponsible theorists, and act on the advice of disinterested administrators, who possess long practical experience of the country, and only desire the real welfare and happiness of the people.

X.—Real and Effectual Representation of all Classes.

It will be seen, then, from what has been stated above, that to all intents and purposes, the masses are represented in the most effectual manner possible in the Legislative Councils of the country. They are not only represented by the administrators who live among them, and whose duty it is to report to the Legislature on any measures affecting their interests; but the official members of the Legislative Councils are also their truest and best representatives.

As regards greater representation in the Councils, it would be impossible to increase the number of non official members so as to represent all classes without swamping the official element. This means that the character of the Legislature would be radically altered, and the constitution, as it now exists, subverted. If a number of non-official members be added, they must be added as assessors, entitled to give opinions only, but not votes. But what would be the result

of increasing the number of non-official members, whether entitled to give opinions only or votes? It would most assuredly result in a greater representation of a few classes (in Bengal, principally the zemindars and the lawyers), and a smaller representation of the masses. It has been very truly remarked that the best representation of the interests of the country and the people as a whole, is the official, and not the non-official member. The official represents all classes. One official may sympathise with the ryots to a greater extent than another: but no official can be called a partisan. They all do their best to legislate justly and hold the scales evenly between class and class. But non-official members avowedly represent some particular class or interest, ordinarily that to which they themselves belong. They are often pledged to support certain views, and to vote accordingly. The result of increasing the non-official element would be, to increase the representation (I speak of Bengal) of the landlord and lawyer classes, and possibly also of the English mercantile class. In any tenancy legislation, such a result would be most detrimental to the interests of the tenantry. In the passing of the Bengal Tenancy Act, the non-official members, broadly speaking, fought for the landlord interest; had the ryots been represented by such members in the Council, the Act would have been more favourable to the tenant. Not that the Act is not favourable in many respects to the tenant, but that fact is due to the determined efforts of disinterested official members. Additional native members must be men of some position and rank, and such men would naturally favour the landlord interest, while experience has shown that, in matters of taxation, they will favour those measures which press more hardly in proportion on the poorer classes than on the wealthier. I may note as a signal instance, the readiness displayed to increase the salt duty rather than impose taxation on land or personal incomes.

Surely the experience of England and other countries has been just the same. It is not so long ago that the first real representative of the working man was returned to the House of Commons. And when even a working man has acquired some position and wealth, his opinions and sympathies will naturally veer round a little in favour of the classes among whom he finds himself thrown. In Bengal the pleader class would, broadly speaking, be in favour of the interests of the Zemindars. In the first place, a pleader of any position and practice is generally the agent of one or more Zemindars, whose payments constitute a substantial part of his income. Secondly, as they acquire money, pleaders invest it in land, and so become part and parcel of the land-owning classes. The same may be said of retired members of Government services,

including Ministerial officers, who generally invest a substantial portion of their earnings in land. The sympathies of young Munsifs and the new class of competition Deputy Collectors is (at any rate before they have had time to acquire land) to a considerable extent with the ryot, but young Munsifs and Deputy Collectors are not made members of the Legislative Councils. European non-official members are mainly appointed as the representatives of the mercantile interest, the planting community, and generally of the non-official European class.

It is manifest, then, that the best and truest representatives of the interests of the country and the people as a whole are the official members. The number of non-official members might be increased, perhaps, if they are made into a purely consultative body, with power to report their opinion to Government. Even this would result in a larger representation of the wealthy and influential classes. But anything more might raise evils and difficulties which can hardly be said to exist at present. Even in elective Municipalities there is no real representation of the majority of the population. The control of the people is a pure fiction, except in one particular, and that is, that Municipal Commissioners are sometimes elected on the distinct pledge that they will do their utmost to reduce the rates,* and oppose any measure of improvement that might tend in the opposite direction. Possibly hot advocates of local self-government may regard this as a healthy and hopeful sign, that the electors are able to bring some influence to bear on their representatives. But the ordinary mind would probably regard it as a not very honorable index of unfitness for autonomy.

The evils indicated are possibly not peculiar to India,† though in India they are intensely aggravated by the fact, that the influential portion of the community is a microscopic minority, composed almost exclusively of a single class,

* I see this fact is alluded to by the Bengal Government in the Resolution on the Annual Administration Report of the Patna Division for 1888-89, published in the *Calcutta Gazette* of August 1889.

† It is very nauseating to listen to some English apologists who, in their fondness for fouling their own nests, remark: "Oh! there is just as much corruption in England among municipal and Local Boards." Granted for the sake of argument, that there has been in some instances. To what is it due? To Government having relaxed its control. These apologists use a two edged weapon, and are hoist with their own petard. The Anglo-Saxon race is generally admitted to be firm, tenacious of purpose, honest, and truth loving. It has been accustomed for centuries to the principles and traditions of popular representation. If among such a race and under such conditions, a gradual extension of local autonomy and power has produced corruption and other great evils, may not a reasonable man hesitate and doubt whether such boons should be foisted, in an intensified form, on an Oriental country?

while the masses are comparatively uneducated and ignorant. Some of the principal cities of England and America have suffered grievously from the Attic boon. There is a reaction in favour of official management, which has resulted in a very considerable amount of central control. In France and other great continental States, the towns and cities are improving, but those who are conversant with the details of their municipal administration, know that they are improving because the central authority with one hand grips the local body by the throat, and, holding a blunderbuss to its ear with the other, exercises that extrinsic moral influence, which apparently the law intended should be exercised by the District Magistrate, the Commissioner, and the Local Government in Bengal, but which, owing to the desire to show as partial successes even the most glaring failures and notorious collapses, is not, as a matter of fact, exercised. The fact is that in France and elsewhere, not only the capitals, but all the cities and large towns had more or less drifted from local self-government into something very different; there remains but a shadow and a fiction of the defunct principle of local administration. The only chance of the success of local institutions in India is, that all should not be praised alike, no matter how different their deserts. Those which have done their duty should be held up as an example for the imitation of those which have neglected it. If Badnugger is still permitted to enjoy the franchise, though it makes no improvements, wastes the rate-payers' money, and poisons them with bad air and water, of a surety Neknugger will slide into the same evil ways, when she discovers that there is an utter absence of discrimination in the award of *Sirkári* praise or blame.

But what if the evils, which are now confined to the parochial affairs of the Slocum-Podgers and Little Pedlingtons of Bengal, should be permitted to become rampant in matters affecting the imperial interests of British India! And will not such evils be caused by representative councils? The landlords of Bengal will send members pledged to abolish the road cess, and make up the loss by enhancing the salt duty, pledged to facilitate evictions and enhancement of rent: the ryots will stipulate for the prohibition of all enhancement: Pleaders will return members pledged to support the various items of the Congress programme, and possibly to abolish all liquor-shops; while traders will stipulate for the repeal of the Income-tax. But, it may be said, if all classes are represented, justice will be done. To this it may be replied that all classes are, under the existing constitution, equally represented; but this would not be so if members were elected. The poorer classes, the masses of the population, would undoubtedly not be represented

to the same extent as the wealthy and more influential classes. No one can allege that fair and equal representation would be possible. Some one class would command a majority, and they would ruthlessly impose their will on the minority. Such a Council might pass a measure rendering the position of the ryot worse; could such a measure be passed in the Legislative Council as now constituted? Certainly not. Unjust measures might be passed in the one, but not in the other. A member, pledged to support the interests of a particular class, would vote for a measure which might inflict injury on a thousand persons for every one benefited. Even now, it might be said, a non-official might do so. Certainly he might do so, but would he succeed? No. Happily the Legislature is now so constituted that such a measure would have no chance of success. Again, the most necessary taxation might be refused, or it might be imposed in such a way as to give an unfair advantage to those classes unduly represented. The local Bengal Council, even as now constituted, with a large infusion of zemindars or zemindar members, would infallibly offer a strenuous, and possibly successful * opposition to a local rate on the land for purposes of primary education and sanitation.

The propositions laid down above are borne out by the experience of many countries. They are, indeed, self-evident, and the argument requires no further amplification or illustration.

XI. Executive Legislation.

It is very doubtful whether the Home Government will regard with favour any proposal for the enlargement of the Councils, or the introduction of the principle of representation. The debates in Hansard will show, that the Indian Councils' Act was at the time considered by many to be in some respects an ill-advised piece of legislation, and not altogether suited to India. *One remarkable result of the Act was to take away all power of Legislation from the Executive Goverment!*

The Executive Government used to legislate for the less advanced portions of the country. Had India been occupied by any other country than England, no doubt the Executive would have legislated for the whole country. But the English lawyer has an inveterate habit of thrusting his own principles and laws on countries utterly unsuited for them. The King's Courts, in their obstruction to the Governor-General and his Council, doubtless thought they were very fine patriots, preserving the undying principles of the English constitution

* The words "possibly successful" are explained by what has been remarked above as a peculiar feature of the Bengal Council.

from the inroads of another Charles. For the Executive to legislate would be almost as impious as for a Hindu to kill a cow! So it was that Legislative Councils were established for regulation territories. But the Executive Government continued to prescribe rules or laws for other parts of the country. Sir Barnes Peacock, mainly on the precedents of English constitutional law, and ignoring, or possibly being ignorant of the fact that there was, and had been such legislation in other countries, combated the legal correctness of the doctrine on which the claim to legislate "executively" was based.

The Government, however, continued till 1861 to act as if they possessed this power in respect of all the outlying and newly annexed Provinces. It may be remarked here that Lord Dalhousie would never have pressed for the establishment of a Legislative Council, unless he had unquestionably believed that his Government possessed the same legislative authority over non-regulation territory which the Crown exercises over Crown Colonies up to the moment of according to them distinct legislative institutions. In the debates on the Councils' Act in the House of Lords, the Earl of Ellenborough expressed some indignation at the dictum of Sir Barnes Peacock. He said: "The non-regulation Provinces were conquered countries, and it was the universal law that conquered countries, until they were regularly placed under the ordinary law of the country conquering them, remained under the direct authority of the Crown. These doubts were suddenly started in the Legislative Council by the Chief Justice, and it certainly was very extraordinary that, having acted as legal adviser to the Government for six or seven years in his capacity of Legislative Member of Council, he had never informed the Government he served of the illegality they were committing." Sir Barnes Peacock's opinion was probably wrong, but the Executive Government in India has sometimes to act on incorrect legal opinion. They did so in this case. It was held that, by the passing of the Indian Councils' Act of 1861, all legislative authority over non-regulation territory had been taken away from the Executive Government, while the force of law was given to all the rules which had been made in the belief that the authority existed. No doubt the intention of the statute of 1861 was that local Councils should gradually be established in all the provinces of India; but this was found to be impracticable. The result was, that no new law or rule required for any province other than Madras, Bombay, and Bengal Proper, could be sanctioned by any authority in India other than the Supreme Legislature.

As might have been expected, this position was found

extremely embarrassing and inconvenient. Indeed, the absolute denial of legislative power to the Executive Government, as regards the wilder and less civilized portions of India, was found to be not merely inconvenient, but dangerous. New situations arose, new combinations of circumstances presented themselves, feelings and actions arising out of ignorance, misapprehension, prejudice, or superstition required careful remedies, and yet the Executive were powerless to pass the new rules and laws required. Public opinion in England exacts from the Executive Goverments of India the responsibilities of a despotism, and yet many of these Governments can do nothing without asking for a law from the Supreme Legislative Council,—a Council which is not directly responsible for the peace and good Government of the territories for which it legislates.

This state of things lasted for nine years, namely, from 1861 to 1870. In the latter year a more summary legislative procedure was provided by the statute of 33 Victoria, chapter 3. The preamble and first section of the Act are as follows :—

> Whereas it is expedient that provision should be made to enable the Governor-General of India in Council to make regulations for the peace and good Government of certain territories in India, *otherwise than at meetings* for the purpose of making laws and regulations, held under the provisions of the Indian Councils' Act, 1861, and also for certain other purposes connected with the Government of India :—
>
> Be in enacted, &c. . . . as follows :
>
> 1. Every Governor of a Presidency in Council, Lieutenant-Governor, or Chief Commissioner, whether the Governorship, or Lieutenant-Governorship, or Chief Commissionership, be now in existence or may hereafter be established, shall have power to *propose* to the Governor General in Council, *drafts* of any Regulations, together with the *reasons* for proposing the same, for the peace and government of any part or parts of the territories under his government or administration, to which the Secretary of State for India shall, from time to time, by resolution in Council, declare the provisions of this section to be applicable from any date to be fixed in such resolution.
>
> And the Governor-General in Council shall take such drafts and reasons into *consideration*, and when any such draft shall have been *approved by the Governor-General in Council*, and shall have received the Governor General's assent, it shall be *published* in the "Gazette of India" and in the local Gazette, and shall therefore have *like force of law*, and be subject to the like disallowances as if it had been made by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations.
>
> The Secretary of State for India in Council may, from time to time, withdraw such power from any Governor, Lieutenant-Governor, or Chief Commissioner on whom it has been conferred, and may, from time to time, restore the same as he shall think fit.

Such Legislation may be called informal or quasi-executive legislation. The section was applied to Ajmir and Merwara on the 16th March 1871; to the Andaman and Nicobar Islands on the 15th July 1872; to certain districts of Assam on the 1st January 1873; to Coorg on the 1st October 1877; and to Upper Burmah (except the Shan States) on the 1st March 1886. It has also been applied to portions of other Provinces. The Supreme Legislature still legislates for the Central Provinces, the bulk of Assam, and the Panjab. There are some who think it would have been better to apply this section to the North-West Provinces instead of giving it a Council under the Councils' Act. There is apparently nothing to prevent the section from being applied even to advanced territories, as the preamble merely uses the words "certain territories."

It is a question whether the section should not be applied to the Punjab, Assam, and the Central Provinces. The time of the Supreme Council has been taken up this year in passing no fewer than four Acts for the Central Provinces. These Acts were really the production of the Chief Commissioner, and Mr. R. Crosthwaite went up to Simla and passed them. If the Statute of 33 Victoria had been applied to the Central Provinces, the only difference would have been that *Mr. Crosthwaite would not have gone to Simla*, but that the Chief Commissioner would have *sent the drafts* up to Simla, and they would have been passed by the Executive instead of the Legislative Council. Can any unprejudiced person venture to affirm that the Acts would have been a whit better or worse in one case than the other? As a matter of fact, they would have been exactly the same. Mr. Crosthwaite's Bills passed almost without remarks from any other member It would be simply farcical to allege that these Bills were likely to be any better for going to the Legislative rather than the Executive Council. If there were likely to be any difference, it would be the other way, as at a secret meeting, with informal discussions, members might be more ready to make suggestions than they would be in a public meeting with press reporters taking down every word. The fact is that questions connected with the land tenure of a Province must be left to the local administration of such Province. I once heard a Madras Judge say, that he had read the Bengal Tenancy Act, but that many parts of it were quite unintelligible to him. So it would be presumptuous of Bengal Civilians to suppose that they could improve a Bill dealing with land tenure coming from Madras or Bombay. And if those whose life has been spent in dealing with matters of land revenue and rent, and the relations of landlord and tenant, could not criticize with advantage measures framed in, and for other Provinces, much less could non-officials hope to do so.

Representative Councils, as they exist in other countries would mean in India a complete *bouleversement* of the existing constitution. Since 1861, as has been pointed out, the Executive Government cannot make any rules or pass any orders having legislative force.* This, in the opinion of many high authorities, was going dangerously far. Still, the Executive can, through the Legislative Council as now constituted, pass any measure it pleases, though not without formal procedure and delay. If anything be done to take away or lessen this power, the one safeguard of the Empire would disappear. The most urgent question for consideration seems to be, not whether the authority of the Executive should be weakened—and it would be weakened by any expansion of the Legislative Councils, which was an expansion in reality, and not merely in name—but whether, in certain circumstances and conditions of urgency, and under certain restrictions, the Executive Government should not be given the power to issue rules and orders having legislative force, and whether the quasi-executive legislation under the Statute 33, Victoria, c. 3, should not be extended to a larger area of the country. It is instructive in this connection to read the debates on the Councils' Act in the House of Lords. Several speakers dwelt on the fact that there were many persons, and among them those of great authority, who urged that the Legislative Council should be altogether abolished, and that a return should be made to the old system of 1833, placing the power of legislation exclusively in the hands of the Governor-General and his ordinary Council. Several members, Liberals and Conservatives, expressed their opinion strongly, that petty mock Parliaments were quite unsuited to the circumstances of India. Earl Grey said that the existing Legislative Council was an admitted failure: the opposition to Government had been led by one of their own Judges, and this was felt to be an evil so urgently requiring the interference of Parliament, that it was probably the cause of the present Bill. In fact the Bill has been described as a Bill for extinguishing Sir Barnes Peacock. Some members expressed a fear that the Council constituted by the Bill would prove just as unmanageable as the one superseded. As regards this, Earl de Grey and Ripon pointed out that the members of the existing Council held their seats *ex officio*, and were appointed by other authority than that of the Governor-General; whereas the additional members of the proposed Council would be selected by the Governor-General, and would hold their seats for only two years. The

* Rules passed under any law, in which the power to make such rules is delegated to any authority by the law itself, have of course the force of law.

Earl of Ellenborough pointed out the urgent expediency of putting an end to the scandal and mischief which had attended the operation of the Legislative Council. It is important to note that it was in the interests of the native population that several members urged the necessity for keeping more power in the hands of the Government. The Earl of Ellenborough said :—"As far as his own Council goes, the Governor-General may almost universally expect that every measure of his, which fairly deserves approbation and support, will receive them, and that they will not be reluctantly given. But beyond the limits of that Council all is uncertain, uncertain even in persons who occupy some of the highest positions under the Government. That arises from this circumstance : there are among the English in India two parties. One of these parties desires to govern India for the English, and to treat it as if it was a property. There is another party which adheres to the Queen's Proclamation—which desires to govern India in the spirit of that Proclamation, and to do equal justice to the Hindoos and Musulmans as well as to the English, and, above all things, to respect the religion of the people. That is by far the smallest party ; and its head is necessarily the Governor-General." The Duke of Argyll, who followed him, said :—"The noble Earl should remember that although it was perfectly true that the Governor-General might possibly be a minority in the Council, as he always might have been, yet the Bill amply secured a majority of that particular class (prominent among which were the Indian Civil Servants) who were for governing India in accordance with the wishes of the natives ; there would be the officials connected with the Governor-General and the members of the Civil Service ; and the independent members, representing the commercial community, would always be in a very small minority. He thought that this was a great security for the good government of India, because, whatever might be said of the shortcomings of the Civil Service, he was sure it would be admitted on all hands that the Civil Servants had uniformly desired to consult the wishes of the native population."

XII.—Concluding Reflections and Suggestions Regarding the Multiplication of Legislative or Quasi-Legislative Bodies, and Possible Expansion of the Representative Principle.

I must premise that I do not commit myself to the remarks made under this head, which, indeed, are not altogether in harmony with what has gone before. They are suggested by my study of the subject, and a desire to see if there is any practicable and

reasonable means of giving effect to the aspirations of the leaders of the native community to share in the legislation of the country without detriment to the administration but weakening of the central authority.

One or two modes have suggested themselves to me, but the following seems to me to be the best and most practicable, having regard to the conditions of a British dependency and to the circumstances of the country. I think any expansion of legislative representation might take the form of an extension downwards in the official hierarchy of the informal or semi-executive legislation described in the preceding part. I will take the case of Bengal only, with the conditions and circumstances of which I am acquainted. The operation of the Statute 33 Victoria, chapter 3, might be so extended in certain matters as to enable "divisional"* councils to propose drafts of laws (or circulars or ordinances having the force of law) to the Lieutenant-Governor. The "divisional" council would be in the position of the Local Government, as described in the first section of the Statute, and the Lieutenant-Governor would exercise the powers of the Governor-General in Council. He might veto the draft, or he might approve it, in which case it would become law. There might be nine separate "divisional" councils for the Province of Bengal, corresponding to the existing Commissioners' divisions, namely, the Patna division, Chota Nagpore, Bhagulpore, Rajshahye, Burdwan, Presidency, Orissa, Dacca, and Chittagong. The Commissioner would be the President of the divisional council, and all the other members would be merely assessors or consultative members: that is to say, it would always remain in the discretion of the Commissioner to send up or not to the Lieutenant-Governor the draft of any law passed by the council. The Lieutenant-Governor might be given power to call for and consider the draft. Supposing a division to contain six districts, the Divisional Council might be constituted as follows:—

The Commissioner, President	1
The Senior Magistrate-Collector, Vice-President .	1
The other Magistrate-Collectors	5
The Chairmen of Sudder Station Municipalities ...	6
Two leading Zemindars	2
A selected Government Pleader	1
Two representatives of the agricultural community,	2
One representative of the trading community ...	1
Total ...	19

* I speak of Commissioner's divisions. There are nine such divisions in the Lower Provinces. There are about five districts in each "division."

The representative of the trading community should be a European in indigo, silk, or tea districts; the representatives of the agricultural and trading communities should be selected by the President from names to be submitted by the Collectors of Districts. The former would be chosen for their known identity with the interests of the ryots. The two leading zemindars might be chosen from amongst themselves by all zemindars in the division paying a Government revenue of Rs. 10,000 and upwards. The Government Pleader might be selected by the Commissioner. There can be no doubt that such a council would fully represent every class and interest in the division. It will be seen that the native members would outnumber the European members; but there would be no harm in this, as the council would be purely consultative, and large powers of discretion would have to be vested in the President. Moreover, it might be enacted that a measure could only be carried by something more than a simple majority. With the exception of subjects to be specified by the local Government, any member should be at liberty to propose a law on any subject, which would be brought on for discussion, if two-thirds of the total number of members were satisfied of the necessity for legislation. Such a council would at any rate tap native opinion in a very thorough manner, and its composition should preclude the possibility of any one section of the community gaining an undue advantage over other sections.

It may be said that such a council would be impracticable because of its native majority; that the moral influence of the recommendations of a majority would in time acquire such force as to compel the Commissioner to approve of proposals against his better judgment. I admit the force of this objection. As I have said, I am merely suggesting the lines of possible expansion. The idea is perhaps worth something, and may enable experienced statesmen to work out a safer scheme than the admittedly crude outline to which, as I have said, I do not commit myself. I have already expressed my own opinion in the previous parts of this essay, regarding the absolute necessity for retaining an ultimate official majority, for the simple reason that official members are the only real and true representatives of all classes; they are the only absolutely disinterested members. If non-official members command a final majority, it follows that there might be no representation of the very classes who cannot make their voices heard.

The creation of councils for smaller area units is suggested by the examples of the United States, Germany, Austria, Hungary, and the Swiss Cantons. Much useful remedial legislation is lost to India as a whole, and to its different provinces,

owing to the vast area and the varying characteristics, conditions, and circumstances of the places and peoples to be legislated for. Certainly different Commissionerships in Bengal present far greater differences than are to be found in different portions of certain European States having separate local councils. For instance, Austria has separate Provincial Legislative Councils for High and Low Austria, Bohemia, Bouкovnia, Carinthia, Cracovia, Dalmatia, Galicia, Moravia, Duchy of Salzburg, Silesia and Styria. These provinces are not so large as many Indian Commissionerships. Of course, there are many restrictions on the amount and extent of legislative independence granted to subordinate provinces of the same State, and those who wish to see an extension of legislative autonomies in India, should bear in mind that in the German, Austrian, and Hungarian provinces, the Government or official control is carefully preserved and safeguarded. It is as an equivalent to this control that I have recommended the grant of an absolute power of veto to the Commissioner-President of the Divisional Council.

Under the Bengal Local Self-Government Act of 1885, District and Local Boards have been constituted, the jurisdiction of a Local Board being co-extensive with a sub-division of a district. But there are sections which provide for the creation of much smaller units, to be called "Unions," which would be groups of two or three villages. Supposing that such Unions have been created, it might be possible on certain questions of parochial, rather than provincial interest, to poll them, and initiate legislation in accordance with the popular vote of a strong majority. Let me instance such questions as liquor shops, fees on *jattras*, processions, marriages and Barwari Poojahs (to be spent in the village,) free primary education, sanitation, tolls, and pounds.* Popular assemblies, such as the Comitia of Rome, and the early Teutonic Assemblies of freemen have disappeared, but a transference of legislative authority to the voters at the polls is still to be found in Switzerland † and America. The principle is known in England under the name of local option. The difference between America and

* We might in this way solve the problem of extra taxation for local wants. It is probable the people would rather increase the funds at the disposal of District Boards, Local Boards and Unions, by small self-imposed fees (to be spent in the village) than to have any pure additional taxation imposed by the Local Legislative Council. Fees on *shrads* or Barwari Poojahs would probably be considered objectionable as an interference with religion.

† The Swiss Federal Constitution (Art. 89) provides that, on the demand of eight cantons, any Federal law of general application, and not of an urgent character, must be submitted to popular vote for acceptance or rejection. This is called the Referendum.

Switzerland is. that in the former country *proposed* legislation is submitted to the popular vote before it is undertaken, whereas the Swiss Referendum can only be applied to laws which have actually been *passed*.

"Divisional" councils, as has been remarked, would only legislate on those subjects on which the Local Government might permit them to legislate. If the subjects were confined to matters of purely local interest, laws in contiguous "divisions" might differ without any inconvenience to the community. The following is a list of the subjects on which the Province of Styria has legislated for itself: construction of buildings; servants; vine-culture and vineries; extinguishment of fires; communes and communal elections; streams and irrigation; roads; agriculture; registration of landed property; district assemblies (*Anglo-Indicè*—Local Boards?), and obligations of private persons to assist public officers. This is an instructive list. In other States laws may be found also on the following subjects: parks, forests, hunting, local taxes, lawyers, post-office, pawn brokers, foreigners, press, prisons and rural lands. India, as has been so often pointed out, consists of many countries, many races, and many languages. It is this fact that often prevents the undertaking of useful legislation, and that, too, even by Provincial Councils. It is almost impossible to pass Acts that shall suit equally well the conditions and requirements of all parts of even one Province. A Legislative Council for North Behar, such as I have indicated above, would assuredly pass a Tenancy Act of a very different character to one passed by a council for Eastern or Northern Bengal. The passing of the Bengal Tenancy Act reminds us of the way in which Procrustes operated on his victims; a limb is lopped off here to satisfy the pro-ryot members, whose service has been mostly in districts where the ryot is badly off and oppressed; another limb is stretched out to satisfy the pro-zemindar member, and so on. Just as Procrustes stretched all his victims, big or small, on the same iron bed; so the same Act is thrust on all districts alike, no matter how different their conditions and necessities.

If there were a council for each division, the conditions to be legislated for would be the same or almost the same. Let us illustrate our argument further. Suppose a large majority in the District of Hooghly are in favour of local option in the matter of liquor-shops, why should they be denied the boon, because Patna, Arrah, Gya and Monghyr, if polled, would be against it? Mr. Whitley Stokes' Easements Act has been laughed at, because it was passed only for Coorg, Madras, and the Central Provinces. When it was passed, there was a prejudice against codification and the codifying Law Member. Other Provinces would have none of the unholy thing. It was a case

of *timeo Danaos et dona ferentes.* But there was no reason why the great territories of Madras and the Central Provinces should do without legislation they wanted, because other Provinces did not want it, or thought * they did not want it.

The existence of "Divisional" councils would be useful in two ways. Firstly, they could legislate with greater certainty and confidence on the petty matters entrusted to them, as their personal experience would extend to the whole of the area legislated for. Secondly, the Local Government would have a reliable body to consult in the matter of the extension of the various Acts passed by the main Provincial Council. As has been remarked, the great clog to remedial measures and improvements is the enormous area to be legislated for. Perhaps six Collectors are in favour of certain legislation, while six others are not: but they *may* all be perfectly right, *quoad* the requirements of their respective districts. The consequence is that inaction is preferred to action as being safer. Of course the *laisses faire* policy is all very well if it means leaving *well* alone; but it is just the reverse when it means leaving *ill* alone.

"Divisional" councils would be useful as responsible consultative bodies in this respect. Just as the Government of India often passes an Act, leaving it to Local Governments to extend it to their territories or not as they please, so the Local Government might enact a larger body of *législation facultative,* leaving it to the discretion of Divisional councils to extend it to their divisions. Of course the Provincial council would only act in this way when it doubted the advisability of a general application of the Act, and not where it was satisfied on such point. Many instances could be given of matters in which legislation of this character is called for. At present one part of the Province is starved in one matter, because the authorities of another part say they do not want any food of that description, and *vice versâ.* One district would allow village punchayats to inflict small penalties for sanitary offences, while another would not. Members of the same community or religion are often divided on some important question affecting their interests. But why should they not all be pleased? Why should an Act be denied to those who want it, merely because others say they do not want it. Let us instance the Mahomedan Marriage Registration Act. Suppose the districts of Rungpore, Dinajpur and Rajshahye to be in favour of compulsory registration of marriages and divorces. Why should

* I say "thought," because it would be far better to extend the Act to other provinces. The Civil Courts would have a compact code to refer to, instead of having to grope about for the law in diffuse English treatises, such as those of Gale and Goddard.

they be deprived of a compulsory Act, because the Mahomedans of Tipperah and Backergunge think registration should be voluntary? Again, forest preservation and game laws are matters *par excellence* in which the opinion of the community affected should be consulted, and a 'Divisional" council would exactly represent such opinion

Provincial councils sometimes bemoan the restrictions on their power of legislation; but no one who has paid any attention to the subject can doubt that they might, had they been so resolved, have accomplished a good deal of useful legislation. The obstructions are two-fold—firstly, the English lawyer influence in Presidency towns, which is opposed to much legislation; secondly, the large area and differing characteristics of the province to be legislated for. I am inclined to think Provincial Councils might, with advantage, take a leaf out of the book of some of the American States; I mean that they might pass measures for improving the condition of the vast majority of the population. Agriculture is the principal occupation, the principal source of livelihood, of the people all over India. This being so, it behoves the Government to pay especial attention to the welfare of the agricultural community, on the principle of conferring the greatest good on the greatest number. The average mediocre English lawyer advocates the *laissez faire* policy, and deprecates State control. In the innocence of his heart, he really believes that he is saving the people from oppressive and officious interference. Nothing could be further from the truth. With agricultural, commercial, and industrial development, the State must step in more and more to see that labour gets the hire to which it is entitled, and to regulate the relations of employers and employed The Indian administrator is often struck by the fact, that the wages of a daily labourer remain unchanged for twenty years together: "rates" (nirokh) for coolies, carts, palki-bearers, &c., are very stubborn things. Are they not enshrined from time immemorial in the office of the Collector and Magistrate, and who shall disturb them? The law must sometimes step in to break custom.

The case of the State of Minnesota* is much in point. Minnesota is an agricultural state, and minute legislation has been passed with the object of securing to the cultivator the full market price of his crop, and to prevent his being placed at the mercy of elevator and railroad companies. There has been in Minnesota no lack of disposition

* See "Contemporary Review" for May 1887. Article on "The American State and the American Man." By Albert Shaw.

to carry State regulation to the extremest lengths, and hesitancy has arisen only from the fear lest the farmers might injure themselves, if they crippled the railroad and elevators with over-severe restrictions. The railroad law requires, among other provisions, that cars shall be supplied to any applicant, and that the right to build warehouses on railroad land adjoining the tracks shall be freely accorded, and that side-tracts shall be provided.

Contrast this with the absence of all regulating legislation in India. Are not those who send grain by railway in India more or less at the mercy of subordinate Railway officials? It has often struck me that the cultivator always does not get for his paddy or other crops the price he ought to. There is but one railway station to which he can take his rice, and perhaps, owing to bad roads, he can only take it there during one-half of the year. Perhaps all the operations there are monopolised by an up-country Bania or a Marwaree. The cultivator does not know how to ship the rice himself, or to whom to send it, even if every facility were given him. He must sell to the "ring" who have established a monopoly at the railway-station. They, perhaps, give him a fair price, but not the full price to which he is entitled. In Minnesota the State appoints commissioners, who are required to take up the cause of any aggrieved individual, and prosecute the railways at the public cost and with the aid of the public prosecuting attorneys. Agricultural fairs, central and local, are subsidized from the State treasury, and in one year the Minnesota legislature appropriated a hundred thousand dollars for the equipments of a State fair-ground. The farm buildings and eighty acres of land constitute a homestead exemption, which is safe from all attachment and execution processes. Contrast with this the exemption in sec. 226 of the Code of Civil Procedure. In Dakota the "exemption" laws are far more liberal than in Minnesota. In Bengal the agricultural community asks for bread, and they are given stones in the shape of price-lists, estimates of outturn of crops, jute-forecasts, packets of Buxar wheat sent to be sown and reported on by zemindars who want to become Rajas, and swarms of locusts and leeches in the shape of survey and settlement establishments to harass them and suck their life-blood out.

Again in the States and territories of the grazing belt, there are minute cattle-laws. The Statute books of Montana and Texas reveal the importance of cattle-raising, while the laws of California bear the impress of a mining community. Of course such legislation sometimes overeaches itself; but in the main it confers inestimable benefits on the community in whose interest it is undertaken, that is, on the majority of the

population. Jealousy for the freedom of the individual has not prevented legislation from prohibiting the sale and manufacture of liquor ; but, of course, such laws are obeyed only so far as they are in accord with local public sentiment ; beyond that point they are a dead letter. Mr. Shaw says :—"The American Economic Association—a new body, including as members a majority of the best political and economic students of the country—frankly repudiates *laissez faire*, and publishes as the first in its statement of principles :—"We regard the State as an agency whose positive assistance is one of the indispensable conditions of human progress. Let this doctrine be accepted without qualification. Let it be understood that it is within the legitimate province of the State to do anything and everything." I am convinced that the result of an emancipation from the *laissez faire* bugbear, which now exerts so unfortunate an influence, would be a more careful and scientific law making. Certainly the history and circumstances of India are in favour of state control, regulation, and interference. If there be such control and interference in matters of taxation and the like, why should local legislatures shrink from passing measures calculated to increase the wealth of the people, and make their lives happier ? *

It may be urged by those who oppose the idea of "Divisional" councils, that the Collectors of districts are equally capa- of ascertaining the real opinion of their districts, and reporting it to the Commissioner. To such critics I merely reply that I have offered the above suggestions with great diffidence, and not with any conviction of their practicability. The "Divisional" council gives some scope to educated aspirations, and it recognizes the principle of local representation. I have, therefore, suggested it. No reasonable man will admit the wisdom of suddenly thrusting on Oriental nations the institutions of the West, the slow growth and product of many centuries. But unfortunately would-be reformers count unreasonable men among their ranks, men who think that new wine should be put into old bottles, men who have no faith in the adage 'Naturâ nihil fit per saltum.' The spirit of breathless (but not harmless) benevolence is a factor, the existence of which cannot be altogether ignored by the statesman.

Nor can the practical writer on law and administration afford to be behind the age. Though he himself may not have given in his adhesion to the proposition that local self-government and legislation by the people are "like a barber's

* We get elaborate procedure codes—far too elaborate!—*Usque ad satietatem !* The country wants cheap and simple procedure, It wants less adjective law, and more substantive law, directed to the wants of the people and the development of the resources and wealth of the country.

hair, that fits all buttocks," occidental or oriental; still he must not lose sight of the fact that this eternal principle is being constantly quoted by those who have considerable power and influence, and are in a position to bring pressure on the Home Government with the view of effecting radical alterations in the constitution of the country. The writer does not say that these alterations ought to take place; but if they are to take place, he suggests a means of effecting the object aimed at, without detriment to the country or the administration. He has tentatively suggested a scheme, which may cause ideas to fructify in the minds of Indian statesmen of large experience, and so may indirectly lead to propositions of a possibly safer and sounder character in the same direction.

> "But words are things, and a small drop of ink,
> Falling, like dew, upon a thought, produces
> That which makes thousands, perhaps millions, think."

H. A. D. PHILLIPS.

ADDENDUM.

IT was after I had written and finally revised this article that I received (November 1st) from Mr. Charles Bradlaugh, M.P., the draft of a Bill for Reforming the Supreme and Provincial Legislative Councils of India. My article, it seems, will appear at a very opportune moment, and (should Mr. Bradlaugh succeed in bringing on his Bill) will doubtless be read by those members in either House, who take any interest in Indian affairs.

I regret that I have been unable to comply with Mr. Bradlaugh's request to make his draft Bill the subject of my criticism; but, as I shall shortly be in England, he will perhaps be willing to discuss with me, personally, this and other administrative problems relating to India. The able member for Northampton boldly and honestly asks for criticisms, whether for or against his Bill, as they will be of "exceeding value in guiding" him; and I venture to think my article virtually criticises his Bill, and will suggest to him many points for consideration. He has, perhaps, looked at things hitherto through the non-official (or shall I say, the Congress) telescope; let him now turn the telescope round and look through it the other way, and he will see that what had appeared to him to be very large evils and abuses, have become very small ones. Perhaps the truth lies at some point between the magnifying non-official and the minimizing official lens. If Mr. Bradlaugh desires the material advancement of India and the greater prosperity and happiness

of its populations, there are numerous officials who will not yield to him one jot in that respect. There are others besides him who claim to have the *perfervidum ingenium* of the reformer. Though I may not advocate any radical alteration in the constitution of the Legislative Councils, there are other institutions which more urgently call for the attention of the reformer.

Threatened existing institutions live long, and reformers have a rough time of it, getting more kicks than halfpence, that is, more abuse than fair criticism. However, they have ample consolation in the knowledge that, when a man shirks the real issues, forsakes argument and criticism, and gives vent to mere disparagement and abuse, he pays the best tribute he can to the truth and unanswerable nature of his opponent's case, while he shows that he has no case himself. The *bonâ-fide* reformer cannot help feeling indignation at what he considers gross abuses, and he is compelled by the *vis major* of honest indignation to do all he can to remove those abuses. Those who are opposed to proposed reforms gain little good by attacking or pooh-poohing the reformer; let them demonstrate to the public that the so-called reforms are injurious. This I have attempted to do as regards the proposed radical alterations in the constitution of the Legislative Councils. Though I had not the advantage of having Mr. Bradlaugh's Bill before me when writing my article, yet I venture to think that the article makes out a strong case against the radical alterations proposed in the Bill. However, all honest reformers are always open to solid argument, and I should certainly like to discuss the subject-matter personally with Mr. Bradlaugh; possibly such discussion might result in our both modifying our respective views.

It will not be out of place to mention here that, during the debates on the India Councils' Act in the House of Lords, a proposal was made by Earl Grey for the establishment of a purely consultative Council; and this was the most radical proposal that was put forward at that time. Earl Grey admitted that anything like representative Government in India was impossible; he even deprecated publicity of discussion, saying his experience as Colonial Secretary of some of the Colonial Legislative Councils, had convinced him of the danger of it; and he went so far as to say that the power of legislating should be concentrated in the hands of the Governor-General and the *Executive* Council. But he thought some means should be adopted for the declaration of public opinion on measures before they were finally adopted. "He proposed that a body should be constituted that, for the want of a better name, should be called a Council of State, limited in number, but still comprising as many members as might be found

convenient, and consisting of men of the most distinguished character and station in India, of different races and professions, so that the whole community might be fairly represented. From this body the Governor-General should have the power of nominating Committees to inquire into any subject on which legislation might be required, and to prepare drafts of laws upon them. He further proposed that all draft laws, which the Governor-General thought were proper to be passed, should, before being finally considered, be submitted to a meeting of the Council of State. . . . . Some of the greatest laws passed during the reign of Napoleon were mainly put into shape by the Council of State, a body which possessed no legislative powers but was simply a consultative body." The amendment was strongly disapproved and negatived. Earl de Grey and Ripon spoke as follows concerning it: "The noble Earl, (Earl Grey) said that the Council would be too much open to the influence of public opinion at Calcutta, and too ready to make speeches appealing to public opinion in this country and in India. What was the remedy proposed by those who took objections to the measure supported by the Government? They proposed to establish, apart from the Governor-General, contrary to immemorial custom, and unconnected with his authority, a great Council of State, which was to deliberate in public, to have its proceedings reported and was then to submit its recommendations to the Governor-General. But was not an independent Council such as that suggested by the noble Earl, much more likely to overpower the Governor General, and to force their opinions upon him, than a Legislative Council of the character indicated by the Government? This Council of State, according to the noble Earl, was to be composed of a large number of persons in high position and of great weight, representing, as far as possible, the various opinions and interests existing in India, and enjoying the superadded importance of rank and standing. Were such a Council established, one of two things would happen: Either it would have no real power, would be unable to influence the Governor-General, and would find its opinions constantly disregarded—in which case men of weight and influence would decline to sit upon it, and as a deliberative body it would fall into desuetude and disgrace—or, the much more probable result would ensue, that such a Council, being independent of the Governor-General, having among its members no representative of the Executive Government, and being invited to conduct its deliberations in public, would be enabled to submit its recommendations with such authority that, except in cases of great emergency, the Governor-General would find it impossible to disregard their opinions."

The existing Congress, though not recognized by law, is a Council of this character. Their opinions and resolutions are forwarded to and considered by the Government of India. They have informed the Government that they desire a complete separation of judicial and executive functions; that the Police administration is unsatisfactory and oppressive; that the industrial condition of the people should be developed; that insobriety should be discouraged; that the system of trial by jury should be extended; that natives should be enlisted as volunteers; that arms should be carried without licenses; that the Legislative Councils should be expanded; that the age for competing for the Covenanted Civil Service should be raised to 23; that the taxable minimum of income under the Income Tax Act should be raised from Rs. 500 to Rs. 1,000; and so on. The Government is in the best position to estimate these resolutions at their proper value, and would, no doubt, be glad to receive similar resolutions regarding social and moral reforms. Such opinions and resolutions would not be of any greater intrinsic value by reason of the conferment of some legal status on the body from which they have emanated.

As to Mr. Bradlaugh's Bill, I humbly think it goes too far. If Legislative Councils are to be expanded, and the principle of representation introduced, such alterations should be made tentatively and hedged round with safe-guards. The passing of Mr. Bradlaugh's Bill as it stands, would be the insertion, not of the thin end, but of the thick end of the wedge; it would not be the capture of some subsidiary out-work, but the surrender of the main fortress itself. If the Legislative Councils go, all else must rapidly follow.

H. A. D. PHILLIPS.